

WHAT WILL DRIVE CHINA'S FUTURE LEGAL DEVELOPMENT? REPORTS FROM THE FIELD

HEARING BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED TENTH CONGRESS SECOND SESSION JUNE 18, 2008

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

43-634 PDF

WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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WEDNESDAY, JUNE 18, 2008

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:34 a.m., in room B-318, Rayburn House Office Building, Senator Byron Dorgan, (Co-Chairman of the Commission) presiding.

Also present: Representative Sander M. Levin, Chairman; Representative Joseph R. Pitts; Representative Michael M. Honda; and Representative Christopher H. Smith.

OPENING STATEMENT OF HON. BYRON DORGAN, A U.S. SENATOR FROM NORTH DAKOTA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Co-Chairman DORGAN. We're going to begin the hearing this morning. I'm Senator Dorgan, Co-Chairman of the Congressional-Executive Commission on China [CECC]. The Chairman of the CECC, Congressman Levin, is detained at the moment in a Ways and Means Committee markup, but he will be along.

We're joined by Congressman Pitts. Congressman Pitts, welcome to you.

Let me describe the purpose of today's hearing. We have four witnesses. Let me state at the outset that the witnesses are people of great courage who have, in many different ways, fought for change, democracy, and human rights in China. Three of these four witnesses have spent time in jails in China. We appreciate the work that all of them have done on behalf of people who aspire and yearn to be free.

The purpose of today's hearing is to examine China's legal development. For three decades now, China has engaged in legal reform. But it seems to be at a standstill, and it is unclear at this point whether that means it has stalled or is at a turning point.

Why does it appear to be at a standstill?

Well, first, the massive earthquake that tragically killed and injured tens of thousands of people, too many of them children. Second, the violent crackdown that began in March continues in Tibetan areas. Beijing has closed off most Tibetan areas, and detained or expelled journalists. Finally, the Summer Olympic Games are fast approaching. Hosting the Olympic Games has highlighted some of Beijing's achievements. We don't and shouldn't deny them that. But even more it has highlighted Beijing's terrible record on human rights and the environment. As the Olympic torch circled

the globe, Beijing's Olympic dream became a public-relations nightmare.

These three events are having an enormous impact on many areas in China, including legal reform and human rights. And that is why we are here today.

At the Commission's February hearing on the Olympics, I submitted for the record a list of political prisoners. Here is an update on just one: Hu Jia, a courageous activist, was jailed last December by Chinese authorities for comments he made at a European Parliament hearing. His comments were critical of China's hosting the Olympics. At the time of the CECC hearing, his wife and four-month-old daughter had been under house arrest for several months. In April, he was sentenced to three and a half years in prison for "inciting subversion of state power." Hu has severe health problems. His request to be released on bail for medical treatment was denied in June. His wife and baby remain under constant surveillance, and face harassment.

Every country that has hosted the Olympics has had its critics—both at home and abroad. China has dissenting voices too on the Olympics—like Hu Jia. But instead of being tolerant, it has hit back hard with a combo punch of intimidation and imprisonment.

The Commission is dedicated to understanding these events on a deep level. For that reason, we have called four prominent Tiananmen Square activists and now internationally renowned figures in human rights and rule of law in China. We hope they will address two straightforward questions:

What factors are most likely to determine the course of China's legal development in the coming year and beyond?

What factors do Western analysts more frequently tend to overlook or misinterpret?

I would ask each of our witnesses to highlight for us the factors that, in each of your varied experiences, and unique perspectives this Commission should focus on in order to most effectively understand the course that China's legal development is taking and will take as events unfold.

It would be helpful if you would focus specifically on steps China has taken to: combat corruption and to maintain popular support for further reform, prospects for the enforcement of worker rights, collective bargaining, and labor unions.

I would also ask that you comment on the regulation of religious life and of minorities, and trends in pre-Olympic crackdown.

Finally, I would also ask each of our witnesses to make a point also of identifying for us the one or two factors that, in your experience, Western analysts most frequently overlook, misunderstand, or plainly misinterpret. Your complete candor will be most helpful and appreciated.

I want to say one final point. China is a big country with a rich, interesting, nearly unbelievable history. It will be a significant force in our lives here in the United States, for good or for ill, for many decades. That's why we aspire to understand what is happening in China.

We as a country strive always to call upon other countries to embrace the human rights of their people, to not imprison people for telling the truth, for speaking out, for exercising their right of free

speech. There is much in China that is troubling us, and there is also much that gives us hope. We're trying to understand China better, and your willingness, the four of you, to come forward today and testify is very much appreciated.

As I indicated, all four of you have played significant roles in the history of China. Three of you have spent time in Chinese prisons. Your courage need not be explained much further than that fact, and we appreciate your being here.

Mr. Pitts, did you wish to make comments?

STATEMENT OF HON. JOSEPH R. PITTS, A U.S. REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA, MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative PITTS. Yes, Mr. Chairman. Thank you very much. And thank you, Mr. Chairman, for holding this important hearing on China's future legal development.

I remain disturbed about the negative trends on human rights issues in China prior to the Olympic Games in August. Many thought the Chinese Government would understand that with a brighter spotlight on its treatment of its citizens, the officials would take this opportunity to allow for more freedom for journalists, lawyers, and human rights advocates. There were positive steps in relation to allowing reporting on the tragic earthquake in China, and this led to much international sympathy and humanitarian and disaster assistance. However, the general trends are disturbing as there is increased harassment of religious leaders and practitioners and others. Case in point is the May 21, 2008, recording of Chinese consulate official Mr. Peng Keyu describing his and other officials' role in organizing, in the United States, protests against and harassment of Falun Gong members. While this particular instance focused on Falun Gong, I have received reports of other Chinese religious believers or political activists inside the United States being harassed and threatened by Chinese Government officials. It is indeed a problem when Chinese officials harass their own citizens at home and in a nation like ours where rule of law is established—it's even more disturbing when the Chinese Government hacks the computers of Members of Congress who focus on raising awareness of human rights violations within China. That does not bode well for the positive treatment of the average Chinese citizen who wishes to peacefully express his or her social, political, or religious views.

In our previous hearing, I mentioned being encouraged and discouraged during countless cycles of two steps forward and then three steps backward in terms of the Chinese Government's respect for the Chinese people. Sadly, since our February hearing, nothing has really changed. I continue to receive numerous reports about Chinese officials' actions against North Korean refugees, Uighur Muslims in Xinjiang Province, child laborers, Tibetans, Catholics loyal to the Vatican, and Protestant house church leaders and congregants. In fact, on June 1, 2008, government officials detained nine house church congregants in Henan Province for providing funds to help victims of the earthquake, and in late May, security officials confiscated a bank card, a mini-van, Bibles, and Christian literature from a house church seminary. It does not appear the

Chinese security officials are interested in maintaining any façade of treating religious believers with respect. There are additional reports, including from China Aid Association, that the “Ministry of Public Security has received funding from the Chinese Central Government to increase its campaign of eradicating house churches throughout China.” Even further, this morning I received a report that a senior house church leader, Mr. Zhang Mingxuan, and his interpreter were detained today as they traveled to meet with an official from the European Union; Pastor Zhang has been beaten, arrested, and imprisoned 12 times by Chinese security officials.

It takes great courage and leadership to challenge the Chinese Government’s actions and attitudes, even more so when the officials break their own laws. Yesterday, the National Endowment for Democracy [NED] held an event to honor “Chinese workers, lawyers, and writers working to advance democratic values and fundamental rights within China.” Recipients of the NED award included Chen Guangcheng, Teng Biao, Li Heping, Li Baiguang, Zhang Jianhong, Yao Fuxing, and Hu Shigen. These individuals, our witnesses today, and others who cannot be named, are true heroes as they seek to make a better today and tomorrow for the people of China.

I look forward to hearing from our very distinguished witnesses and receiving their insights and recommendations on steps the U.S. Government should take to further support the fundamental rights of the Chinese people.

With that, I yield back, Mr. Chairman.

Co-Chairman DORGAN. Congressman Pitts, thank you very much. Congressman Honda, do you have an opening statement?

Representative HONDA. Thank you, Mr. Chairman. I don’t have any comments. I just came to listen to the responses to some of the questions that have been posed for the purpose of our hearing, what are some of your opinions, your insights as to the direction that the PRC should be taking in order to achieve the kind of legal development that is expected by us. Welcome to the hearing. I look forward with great interest to hearing what you have to say from your perspective. I think the other question was, what are some of the factors that Western analysts, Western minds or observers, frequently overlook and/or misinterpret? I would like to know that. That would be very helpful.

Co-Chairman DORGAN. Congressman, thank you very much.

First, we will hear from Han Dongfang, Executive Director of the China Labour Bulletin and a moderator at Radio Free Asia. A 26-year-old railway electrician, he emerged as the leader of China’s first independent labor union since 1949, the Beijing Workers Autonomous Federation, during the 1989 Tiananmen Democracy Movement.

After the crackdown in Beijing on June 4, Han learned that he was on the government’s Most Wanted list, and on June 19 turned himself in to police. He was never tried or sentenced, but he was jailed for 22 months before being released to seek medical treatment in the United States for health problems contracted in prison.

Since 1997, he has hosted an influential weekly call-in show on Radio Free Asia that reaches an estimated 43 million people in China. He has tried to go back to China but has been prevented

and stopped from doing so. He continues to be in daily contact by phone and e-mail with workers in China.

Mr. Han, thank you very much for being here, and thank you for the work you've done on behalf of workers' freedom and workers' rights. You may proceed.

**STATEMENT OF HAN DONGFANG, EXECUTIVE DIRECTOR,
CHINA LABOUR BULLETIN**

Mr. HAN. Thank you, Mr. Chairman. Just for the record, I'm not 26 anymore. [Laughter.]

Co-Chairman DORGAN. We'll stipulate for the record that you're older than you were in Tiananmen Square.

Mr. HAN. Thank you. Thank you.

Actually, just about two weeks ago on my radio program I had a victim, an earthquake victim, calling me from Sichuan Province. His daughter just died, 16-year-old daughter. When the mother, 16 years ago, was giving birth to this girl, she died, so this man raised the daughter on his own. Unfortunately, the daughter died in the earthquake. But when the father went to the collapsed school, he saw the main beam of this building and inside there are these big rocks, that big, everywhere. That's the main reason the whole building collapsed.

This guy was crying on the other end of the telephone line. He finally said, "I'm going to spend the rest of my life looking for justice for my daughter, and the government is not going to do that. The government is not going to respect the law, to hold somebody responsible for this collapsing building, and I am going to have my private law created and I'm going to find those people who were responsible and I'm going to kill them myself." So as a person talking to somebody over the air, it's not easy to listen to this kind of comment in this kind of a situation.

So the only thing I can do is try to calm him down. I said, "Please, this is not the solution, you kill somebody. What if you find something wrong? What if I have some other radio listeners, they are lawyers, and they can provide you some free-of-charge legal advice, even legal help to go through a legal procedure to, for example, make a lawsuit if you collect enough evidence?" So that was very useful and he calmed down. He said, "Please, if there is any lawyer who would like to help me, I would like to go through the legal procedure."

So the reason I'm telling this story is, in China, people don't trust the law. The biggest law-breaker is the government, the judges. The judges don't take these cases, particularly local government officials. They don't like these cases and they just reject these cases. If people don't trust the law, no matter how many laws you can produce, it doesn't work. So from this case, fortunately this guy took my advice and will go through the legal procedure. But there are many people in this country that lost land and they have no compensation. You have millions of people in the countryside in that situation that have no faith in the legal system.

I believe, particularly after the earthquake, this quake really shook everything differently than before. I watched three times the State Council press conference and I could hear from those people, it sounds like their conscience is being shaken out. When they saw

these shocking pictures and they started asking questions, what are we going to do to deal with these things, from watching the State Council press conference I saw even high-level government officials, and they start thinking how to go through this reconstruction process and getting some more people's trust.

Also after the earthquake, the Premier, Wen Jiabao, went to Sichuan three times. He really gained a lot of trust from people. But when I saw this guy flying around, walking the water, I mean, people now respect him as they respect God. I'm asking myself the question, this guy gained too much respect, he's over-respected. He gained too much respect for the party as well. After this earthquake when the rebuilding process began, the corrupt local government officials who were not learning the lesson overnight because of the sad pictures, they're going to steal the money for rebuilding, for reconstruction.

How much Premier Wen Jiabao gained the trust from the people, that will be as a double-edged sword. The Communist Party has to deliver that much respect. I am sure the corrupt local government officials will not be able to deliver what the Premier has claimed, so there will be a big clash between people's expectation and the corrupt government officials' behavior. So I put a really big wish on if we have enough legal assistance, and also the news information provided to people, stations like Voice of America, Radio Free Asia. These news media groups can continue their great work to speak ideas to these people, peaceful approaches, and to help civil society to grow in my country.

Second, we have our lawyers in China. My organization is also helping the workers to make lawsuits to claim compensation from employers when they got sick from their work. As well as like these earthquake reconstruction processes. There are people who will need legal assistance. If we have enough legal assistance, concretely providing lawyers to people and to have these people able to claim their compensation, claim their legal rights through a legal procedure, as I said earlier, no matter how many laws you produce, if people don't trust them, people don't use them, or people cannot afford to use them, that doesn't work.

There's no legal system, no rule of law that can be built in any country without people trusting the law and people having the ability to use the law. Therefore, again, I really recommend that the U.S. Government and this country—the United States—really strongly support the freedom media in China, and also provide legal help to those people who need lawyers in China. Thank you.

[The prepared statement of Mr. Han appears in the appendix.]

Co-Chairman DORGAN. Thank you very much for your testimony. We appreciate hearing your perspective on these issues.

We've been joined by Congressman Chris Smith. Mr. Smith, do you have an opening statement?

Representative SMITH of New Jersey. I do. I apologize for my lateness. I was unavoidably detained. The Prime Minister of Kenya is in town and we had a meeting that was set prior to this, so I apologize for that.

STATEMENT OF HON. CHRISTOPHER H. SMITH, A U.S. REPRESENTATIVE FROM NEW JERSEY, MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative SMITH of New Jersey. Let me just say thank you for holding this very important hearing, Mr. Chairman. Early in the 1990s before the permanent normal trade relations [PNTR] debate, while we still called it most-favored nation [MFN], most of the so-called experts told Congress that global free trade and the laws of economics would irresistibly lead to the rule of law of China. Now we know that these so-called experts were wrong. In fact, the decisive factor has been the Chinese Communist Party leaders, and they have crushed moving toward the rule of law.

Trade was a tool that we had to influence them to accept the rule of law, and we gave that tool away, squandered it, when we brought China into the World Trade Organization with no linkages whatsoever to demonstrable progress in human rights. The result has been ominous: a government that advances toward the rule of law in commercial matters, at least sometimes, while it moves backward in its respect for fundamental human rights; a government that comments an economic giant, while remaining itself a human rights pariah state.

Still, it leaves two levers remaining to us to influence the Chinese leaders: speaking the truth about their regime and disseminating the truth to the Chinese people by means of the Internet. As to speaking the truth, we don't do this often enough. Often the truth of the Chinese Government's actions is so shocking that we can hardly grasp it, or prefer not to think about it.

Last night at a National Endowment for Democracy awards ceremony where I was one of the presenters, I met some old friends, a group of heroic Chinese human rights activists. One of the activists we honored who could not be there because he was sitting in a Chinese prison was Chen Guangcheng.

Chen filed a class action lawsuit, using the rule of law, against the Chinese Government on behalf of thousands of women from Yinye, a single city in Shandong Province. These women were subject to the crime of forced abortion. For his lawsuit and for an interview he gave about Yinye to Time Magazine in 2005, he was placed under house arrest, he was beaten, and now he's serving a four-year prison term.

If Chen can speak the truth inside of China and pay a price like that, like many of our witnesses here today have done before him, I think we must do a better job of speaking truth to this unjust power. They have to know that we mean business, and that someday the perpetrators of these crimes will be held to account. What is the truth about the one-child-per-couple policy, to take only one of the Chinese Government's human rights outrages?

The truth is that most women in China are limited to bearing just one child and that the government coerces compliance with this by mandatory monitoring of all Chinese women's reproductive cycles, mandatory contraception, mandatory birth permits—imagine, you have to ask for permission to have a child—mandatory sterilizations, and/or contraceptive implantation against their will, and government control of birth spacing, all part of a national plan to complete the local birth target numbers.

That compliance with this policy is coerced by forced abortion, draconian fines which could be up to 10 times the average Chinese annual income—that is both husband and wife—and it includes the bulldozing of homes, placing incredible social pressure to force women to abort by punishing their families, workgroups, and villages for their pregnancies, and by denying unlicensed children healthcare and education.

When we watch the opening ceremonies of the Olympics, Mr. Chairman, which will be replete with smiling young people dancing and waving flags, ask yourselves, where are their brothers and sisters? In the land of the one child per couple, they have been killed. Brothers and sisters are illegal in China. The truth is also that this evil system violates the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the 1994 Program of Action of the Cairo International Conference on Population, and the 1995 Beijing Declaration and U.N. Declaration on the Rights of the Child.

As to the second tool, using the Internet to disseminate the truth inside of China, I want to mention very briefly the Global Online Freedom Act, which would prevent U.S. high-tech companies from turning over to the Chinese police information that identifies individual Internet users and to require them to disclose how the Chinese version of their search engine censors the Internet. In October, the Foreign Affairs Committee approved my bill and we are hoping to move it to the floor of the House soon.

I want to mention the exciting firewall-busting technology that a group of dedicated Chinese human rights activities are promoting. They have technology that enables users in China to bypass the Chinese Government's so-called Golden Shield censorship effort and surf the Internet freely.

With this technology which has been demonstrated to me in my office, Chinese users can visit the same Internet you and I do and there is nothing the Chinese Government can do about it. I think we should all ask the State Department to support this technology which could produce a human rights and rule of law revolution in China.

Again, I thank you so much, Mr. Chairman, for calling this timely and important hearing, and yield back the balance of my time.

Co-Chairman DORGAN. Congressman Smith, thank you very much.

We've been joined by Congressman Levin, who is the Chairman of our Commission. I indicated that he was at a markup of legislation in the Ways and Means Committee, but he is now here and we appreciate him being here.

I have to leave for something on the Senate side, but what I want to do, is I want to introduce our next witness and then turn the remainder of the hearing over to Congressman Levin. Again, let me say that the four witnesses who have come here today are people of great courage. They've demonstrated that courage in many ways.

Our next witness is Wang Tiancheng. He is the Visiting Scholar at the Center for the Study of Human Rights at Columbia University Law School. He earned his bachelor of arts from Hunan Normal University and his law degree from Peking University, where

he served as law lecturer. He was active in the 1989 Pro-Democracy Movement and was imprisoned without trial, serving one-and-a-half years in a reeducation through labor camp.

Upon release he helped found an independent political party, the Liberal and Democratic Party of China, and was involved in the Free Labor Union of China. He was quickly detained again in 1991, and along with his friend Hu Shigen, was charged with “actively taking part in a counterrevolutionary group” and “carrying out counterrevolutionary propaganda and incitement.” He was sentenced to five years in prison. He served his five-year prison term and was released in 1997.

He continues to play a very active role in speaking out about politically sensitive issues and has published influential and prize-winning papers on the rule of law, federalism, and constitutionalism in China, and has called publicly for a reconsideration of the government policies on Tibet.

Let me thank you very much for being with us, and you may proceed with your testimony.

**STATEMENT OF WANG TIANCHENG, BEIJING SCHOLAR AND
FOUNDER, LIBERAL AND DEMOCRATIC PARTY OF CHINA**

Mr. WANG. Thank you.

In terms of the legal system in China, we face three very serious problems. First, there are lots of laws and systems which deprive human rights, basic rights. They are passed to take away basic rights. Second, the judiciary is not independent and is controlled by the Communist Party. Third, the government, as the law enforcement agency, does not receive outside supervision.

Those three issues are the products of the one-party autocratic political system. The largest obstacle to China in establishing the rule of law and ensuring human rights is the one-party autocratic political system.

How to facilitate the transformation of the political system, I think is the key issue. I don't believe that small changes in Chinese law will eventually lead to the democratization of China. If the political system is not changed, I don't believe that the rule of law will come.

I think the greatest impetus for accelerating the reform of Chinese law in the direction of guaranteeing human rights is the people's dissatisfaction with reality and the increase in the desire and call for democracy, human rights, and the rule of law. The pressure from the international community is also very important. It does make a difference.

Here, I have four suggestions. First, I hope the American Government and the international community could urge the Chinese Government to ratify the International Covenant on Civil and Political Rights. The Chinese Government signed this covenant in 1998, 10 years ago. But up to now, today, the covenant is not on the agenda of the National People's Congress of China. I hope that we could urge the Chinese Government and we could ask the Congress of China to ratify the covenant, make the covenant a part of Chinese law. Then we can request that all the laws that conflict with the covenant be changed or amended.

My second suggestion. I think, of course, it is very important to follow individual cases of human rights abuses, but we should also pay attention to the related laws and provisions. If the laws and system do not change, the Chinese Government's softening or changing on certain individual cases, do not mean improvement of the situation of human rights in China, because similar abuses still do occur.

Third, I hope particular attention can be paid to the following laws and systems: the assembly and demonstration law; provision in the criminal law related to the crimes of plotting to subvert state power and incite subversion of state power; the regulations on religious affairs issued by China's State Council; the reeducation through labor system; the situation in the custody houses.

The fourth suggestion is to urge the Chinese Government to establish an effective system for reviewing the constitutionality of laws. That is to say, give people the right to challenge unconstitutional laws in courts.

One last statement. Having the Chinese Government accept these criticisms and demands is certainly not easy, but I believe that unremitting criticism and pressure will eventually obtain results and benefit the facilitation of democratization in China.

Thank you.

[The prepared statement of Mr. Wang appears in the appendix.]

STATEMENT OF HON. SANDER M. LEVIN, A U.S. REPRESENTATIVE FROM MICHIGAN, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Chairman LEVIN [presiding]. Thank you very much.

I'm sorry that I missed Han Dongfang's testimony—though I had a chance to look at your statement. I think of the four of you here who have been so instrumental in bringing these issues to the fore, you are the only member of the distinguished panel whom I had a chance to meet before, many years ago. I regret that the Ways and Means Committee called a markup that conflicts with this hearing, and I may have to leave to vote on some amendments, but my colleagues will carry on.

The concern that exists among the five of us, and other members of the Commission, both Executive and Congressional, are widely shared in this Congress. I expect that there will be more and more interest in this as the Olympic Games come closer, though it's really only an opportunity—and I don't know that we need the Games—to raise these issues.

As we all know, this Commission was created by Congress and the President with considerable discussion, now, about eight years ago. The purpose was to monitor and to report on China's compliance with international human rights standards, including worker rights and the development of the rule of law.

We held a hearing just a few months ago here that documented the commitments that China made in connection with its Olympics bid and in its preparations for the 2008 Summer Games. That's why we often refer to these commitments—because they were a necessary prelude to the determination that China, and Beijing specifically, would host the Olympics.

There's a full transcript of that February hearing available at the back of this room, and I hope that you will all take a copy of it. I think when you look at those commitments, and we hear from you and others of China's failure to meet these commitments, you will see why it's important to look at them, and why we say today that the record is highly disappointing.

There is the new Regulation on Open Government Information, and we hope that it will be implemented. But let me just say, it's not really clear at this time what factors will set the course of China's future legal development. That is why we are so privileged to hear from you today, because the future is so uncertain. How much it will diverge from the past and improve on the past is unclear.

When we talk about true rule of law, we're not talking mainly about documents that have been stamped with the word "law." We're talking about how there is or is not effective implementation. What appears to be occurring in this area is that there is a huge credibility gap in terms of what is stamped as law and what is real.

In our last annual report, the Commission noted four factors that appear to be highly influential in determining the course of China's future legal development. Just quickly, let me review them. First, China's leaders' increasing intolerance of citizen activism, which you have commented on, and will comment on. Second, and increasingly obvious, the manipulation of law for politically expedient purposes. Third, a concerted effort to ensure that sensitive disputes do not enter legal channels that lead to Beijing, thereby insulating the central government from the backlash of national policy problems. We have seen a good measure of that in recent months. Fourth, the growing impact outside of China of its domestic problems of implementation.

So we're privileged today to have the four of you to talk to us about your first-hand experience. That's what this hearing is really all about. You've been on the ground.

So thank you to the two of you who have testified so far. Now we are privileged to have the testimony of the Director of the China Internet Project. I remember when I was in China some years ago, meeting mostly with younger—though not all were younger—citizens of China who told me about the development of the Internet there, and how it was going to change, hopefully, and dramatically perhaps, the dynamics within China.

So we're privileged to hear from Xiao Qiang, who, as I said, is the Director of the China Internet Project and who became a full-time human rights activist after the events in Tiananmen Square.

So, welcome. We look forward to your testimony.

**STATEMENT OF XIAO QIANG, DIRECTOR, THE CHINA
INTERNET PROJECT, UNIVERSITY OF CALIFORNIA-BERKELEY**

Mr. XIAO. Thank you. It is a privilege to be here in front of the Commission again.

I am the Director of the China Internet Project and the founder of China Digital Times, which is a Chinese news portal. My research and writing are largely focused on the political and social impact of the Internet in the People's Republic of China.

I often describe the online censorship, the firewall that is sometimes called the Golden Shield Project of the Chinese Ministry of

Public Security, as the largest obstacle that we are facing to promote the freedom of speech in China.

In my past testimonies I have written about how exactly that censorship has been practiced and implemented, and that situation has not changed. China has the world's largest, most sophisticated censorship system, both humanly and technologically. It has been only increasing in past years, leading to the Olympics and beyond. That is a part of the story.

Another part we have constantly heard from the press is the growth of China's Internet. Now China is the largest Internet market in the world, and has more users than the United States. It has surpassed the United States. If we counted the more than 485 million wireless cell phone users, China is a seriously wired country and still has room to grow.

So we are often facing these two fundamental questions. One, is we do see the growing use of the Internet. In my written testimony I described how that has impacted Chinese society.

But then we also see this increase in censorship and the government still has very effective control over the online media space. How do we read that? How do we interpret that? What does that mean for China's rule of law, legal development, political transformation, and relationship to the world? These are very key questions.

In my written testimony I gave three examples of very prominent online cases that happened in the last year. Two of the three are positive examples about how rising online public opinion and increasing civic engagement facilitated by the Internet, actually caused some impact and changes in those individual cases, whether it's raising the right consciousness or actually changing government policy or implementation, such as in Shanxi Province—the Brick Kiln Case.

But then I also gave another strong case, that of a large demonstration that was caused by corruption and financial scandal of a local government, the news affected tens of thousands of people, but the news was completely suppressed on the Internet. That was just an example.

The whole picture is described as such. The Chinese Government is capable to this day to effectively control the Internet, particularly on the issues of directly, openly challenging the legitimate state of the Communist Party. On the issues like massive, collective action—protests—information such as this can possibly propagate through the Internet, and communicate and connect with other protesters. That kind of information is being suppressed the most harshly online.

The only way to sort of address that is, because the Internet after all is not just within China, it is across the boundary, therefore they oversee servers and blogs and Web sites and news reports to, at least to a certain degree, keep those stories alive and coming back to China if we can penetrate that firewall.

But while the Chinese Government can no more control the information absolutely, there are increasing spaces for the ordinary citizens to participate in the political life and in raising their concerns in the following areas. In areas in the Chinese Government,

different agencies have different interests. The central government and the local government have different interests.

When those interests are sometimes competitive and in conflict, there is often a time gap between when the central authorities can send directives to censorship and the local, special government agencies feel uncomfortable with that information. There is often a gap in the time of the incidents. When that happens, that gives the Internet, online citizens, an opportunity to raise their issues.

In the cases I pointed to in that category, which is a local action being aggregated through the Internet, it is sometimes a matter of hours, sometimes a matter of days of the gap. Then it is very possible when those cases are resident to the larger national online participants that they become a national event. In some cases, even the Chinese national press will catch that news to make a further case. Most of them, we can describe as citizenry engagement to call for more accountable government, to make the government more responsive to the citizens' demands.

I am afraid to say, if you watch the year of 2007 until now, there is not any other sign that the Chinese central leadership has an agenda for political reform. All of their domestic policies, and internationally, can be clearly described as prolonging the monopoly of the political power and there is no sign of reform, except the Internet from the bottom up. Whenever those conflicts of interest exist, whenever there is sometimes a gap that they cannot completely control, you see there are rising citizen efforts to moving things forward incrementally.

So let me just conclude and actually echo what Congressman Smith said. Speaking truth to the power of the Chinese citizens is an increasing activity facilitated by the Internet. To help the circumvention of information, to circumvent the great firewall, is definitely a priority in terms of promoting freedom of speech, rule of law, holding the government more accountable, and political reform in the People's Republic of China.

Finally, that is also providing an incredible window for the outside world to understand China better. But what is happening on China's Internet, because of the censorship and because of the incredible energy and fast changes, it requires a much closer look and understanding of the situation. The over-simplistic, optimistic, or pessimistic interpretation, I'm afraid, will miss that picture.

[The prepared statement of Mr. Xiao appears in the appendix.]

Chairman LEVIN. Thank you. We're anxious to throw some questions at all of you, but before we do that, let me reintroduce Bob Fu, who is the Director of the China Aid Association [CAA], and was very active in the student Democracy Movement at Tiananmen Square. He has in recent years been involved in religious activities, and I think you were jailed as a result 12 years ago. After you were released you came to this country and studied theology here, and now you're director of CAA, where you monitor and write reports on religious activities in China.

So we're very anxious to hear from you, and thank you very much for your years and years of activity. So, take over if you would.

STATEMENT OF BOB FU, PRESIDENT, CHINA AID ASSOCIATION

Mr. FU. Thank you, Mr. Chairman, distinguished Commissioners, Congressman Smith, Congressman Pitts, and Congressman Honda.

Please forgive my Chinglish—Chinese English—if I misspelled something because I had little sleep last night. I had to deal with the arrest of this house church leader, Pastor Zhang Mingxuan, who was kidnapped on the bus in the early morning while he was on the way to meet with a member of the European Parliament, Dr. Belda, who is in charge of China Affairs. He just made a request to visit Pastor Zhang, who's the chairman of the Chinese House Church Alliance. On his way on the bus, he and his translator were both abducted and then put into detention in Shangyushu PSB office, the Public Security Office in the Haidan District, up until now.

Let me, before I talk about the pre-Olympics assessment and the religious persecution situation in China, I want to note that despite Article 36 of the Chinese Constitution which guarantees citizens religious freedom, and despite the 2005 religious regulations in which it encouraged or prescribed some qualifications for religious institutions to be registered, in China up until today, after 50 years of political and economic development, Chinese citizens only have very limited freedom of religious belief but have little freedom of the manifestation, or practice, of their religious belief.

The vast majority of the religious institutions and religious believers have been discriminated against, have been persecuted, by and large. Religious discrimination, in particular against children under 18 years old, has been enormous. These children have basically been forbidden to receive any religious education, even within the government-sanctioned religious bodies.

In recent years, of course, the name of the rule of law, or rule by the law, in spite of these different regulations that were passed on religious affairs, the persecution has been even increased. Just with the approach of the Beijing 2008 Olympic Games, we find that it has been accompanied with, instead of even a saving-face approach as we all thought the Chinese Government would take some measures to reduce some level of persecution, on the contrary, it has been accompanied by a significant deterioration in religious freedom for China's independent religious organizations, institutions, especially the targeted campaign against the unregistered Protestant and Catholic house churches.

In May 2008, two independent sources informed the China Aid Association that the Ministry of Public Security has received special funding from the central government to increase its campaign of eradicating house churches throughout China. On May 28, an official Chinese Government Web site has already reported that on May 28 of this year the City of Beijing conducted a special meeting, convened by the Deputy Mayor of Beijing, to launch a so-called special struggle against illegal Christian activities, the *fandui jidujiao fefa huodeng zhuanxiang douzheng*.

So the horrible abuse of religious believers continues and raids against Christian meetings continue to take place. Persecution includes the largest mass sentencing of house church leaders in 25 years and a level of expulsion of foreign Christians from China not

seen since 1953, with targeted repression of a particular Chinese house church group called the Chinese House Church Alliance, as its chairman is still in detention this morning.

Also, reports have been received of planned intensified persecution with greater control and prevention of large Christian gatherings is also anticipated. It is further feared that harsher persecution will take place even after the Olympics.

If you want me to name some changes, some positive changes, if you can call it that, I could say these changes only happen tactically. They only happened from the strategy of how to get rid of religion overall in the 1960s, to now this strategy on how to control religion and how to control religion in the name of these regulations and the law.

The named charges against religious believers changed from counterrevolutionary in the 1950s, to disturbing social order and social stability in the 1980s, to the so-called “evil cult” charges in the 1990s, to now actually other criminal charges, including separatism, including using illegal business operations, and these types of criminal charges that have never been used before but now are being used more often.

I want to, in particular, note about the challenges in light of the rule of law and religious freedom in China. I want to particularly point out that a mechanism of the religious regulations, the Chinese Government policy to implement their religious policy, is a lip-service strategy. On the one hand, in 2005 China’s new religious regulations suggested that any religious institution and religious site can be registered if you met certain standards. It’s not that the Chinese unregistered churches or other religious institutions are reluctant or antagonistic by refusing to register, actually, it’s to the contrary. In recent years, especially these urban churches, many of them have been trying in every way to register. They file the papers.

Like, I know of a church in Beijing called the Beijing Shouwang Church, with about 1,000 members. They rented their facility in an office building and they have been gathering for several years already. They have filed their application to the Civil Affairs Department and the Religious Affairs Bureau, but without even being allowed to register. So I want to point out just one thing.

One thing that really poses, I think, the biggest challenge for the rule of law on the religious freedom issue is this *Zheng Fa Wei*, this grand, really politically charged quasi-legal body called the CCP Political Commission and Legal Affairs. Oftentimes, like many other cases, the religious persecution cases were brought to the court and oftentimes this *Zheng Fa Wei* body was the final arbitrator of each and every case. I have just obtained this one document.

It is a document called “the Legal Opinion Regarding the Criminal Cases of the Falun Gong,” issued by the Supreme People’s Court and the Supreme People’s Procuratorate in January 2001. This is just one article. I will read it in Chinese. It is better to understand for the Chinese audience. It said, [Article read in Chinese].

This opinion basically said, before any court hearing a sentence on Falun Gong cases—and of course other religious cases applied—the political body, the *Zheng Fa Wei*, has to make coordination and

determine even the evidence and make a determination between the different law enforcement bodies. So to me, we should pursue and call the attention to the Chinese Government to clarify the rule, the conflicting rule between the court and this body.

Thank you.

[The prepared statement of Mr. Fu appears in the appendix.]

Chairman LEVIN. Thank you very much.

We understood when the hearing was organized that one or more of you needed to leave here by noon for another hearing, so we agreed we'd finish right at noon. That will work out; each of us can ask a few questions. I may have to leave after I begin the questioning. Just, if each of you will just take five minutes. We can just proceed.

As always, the staff, our excellent and talented staff, has prepared a set of questions. If we asked them all, we'd be here for hours. So let me just ask you, each of you, to comment on this from your perspective. I think it's hard for us in this country to really gauge where China is and where the people of China are. We read about workers. There is more turbulence today than there was 10, 15 years ago, right? As a result, there are more people who are arrested. In terms of religious activity, there seems to be an increase, and also a change in the perspective of the people of China that is hard for us to gauge. Then if we take the Internet, you mentioned 400 million people online?

Mr. XIAO. Cell phones. The Internet is over 220 million.

Chairman LEVIN. Two hundred and twenty million. Four hundred and some million cell phones. I don't know how you can hold people back from hearing news with 400 million cell phones working. But it's hard for us to gauge what this is really all about with the desire of the government to essentially block information flows. Then we have the ability of cell phones to use text messages, and it's not really clear how the Chinese government intercepts them. So if you would, tell us a little bit about where you think the Chinese people are today, and what this means for American policy and American efforts, both before the Olympics and after. So if you would, just go down the line and inform us of your perspective on that. Han Dongfang, why don't you start? Just quickly, just take a minute or so, because I want to be sure our colleagues each have five minutes before you have to leave. Thank you.

Mr. HAN. Thank you, Congressman. There are more than 80,000 strikes every year in China. That only counts those strikes involving more than 100 people. Those involving 90 people are not counted. Think about the size. In the whole Pearl River Delta area, in that region mainly, foreign companies are investing there, the strikes involving more than 1,000 workers happen at least once a day.

What the Chinese people are doing, after 30 years of economic reform, the market economy now, the government is on the one hand pushing for a market economy, and on the other hand they don't have political reform. Reflected in the workers' rights areas, you don't have workers to organize unions, you have no collective bargaining. This can, down that way, go too long. Now these workers, there is no strike law and the workers are going to the streets.

They go strike anyway. So that is the nature of workers. If we're not treated well, we go together into the streets.

So now I think the government learned that lesson. They fear that. I heard that within a half a year or one year, there will be a law to regulate strikes. So mainly we will have a law to regulate strikes and the workers will have the right to strike. When the strike activities have been legalized, the workers can do more because we believe a strike is part of the collective bargaining. The collective bargaining tool is a very useful tool.

So from this you can see not only people are waiting for the government to provide something and the people are reacting and people's activities are changing the government's mind-set, so therefore I feel very positive in the future that the civil society growth, you have a bunch of nice people within the government, within the Party, and these people together will make a very positive move for the democratic process.

Also, I believe, don't feel too bad if something happens suddenly, because democracy is a process rather than a concrete result. Look at this country—the United States. The legal system building and democracy development is always as a process. I don't think you would say your country has a perfect democracy system, not yet. So, I feel positively for my country, too.

Chairman LEVIN. Okay. Anybody else want to comment on where the Chinese people are and how we react to that? Are they text-messaging each other?

Mr. XIAO. They are, a lot. But let me say it this way, how to picture China. China has 1.3 billion people. The 200 million people on the Internet, you can say essentially are urban elite. When I say "elite," they don't necessarily have a higher political position but they have certain input to the political system. Mostly they're the urban residents. Then you have the rest of the Chinese people, talking about 800 million or 1 billion, the ones who produce the products. Those are the ones who have no right to organize. Those are the ones that do not have full status for even living in the city. Those are the ones that have no political input to the system whatsoever. That is where China's economic competitive advantage comes from. They are the ones who suffer most from the environmental pollution.

So from these top nine members of political bureaus and under the ruling Communist Party, their central code word is control, how to keep the gap between the people who have and who have not in the system that actually produces economically, but is politically not threatening the monopoly of the power of the Communist Party. That's the only secret of China. The human rights issues, the rule of law issues, it's all reflected in that power relationship.

The result is, what you can see, is this oscillation between the two extremes, the insecurity of the rulers because they have this vast base of people who have nothing and the arrogance of the rulers because now they're part of a global economy and they produce such cheap goods and they're becoming a rising power. You see both. You see both phenomena on the Internet as well as from the rising citizen participation and to the other side of the nationalistic—phobia, which is caused also actually by the Internet. I agree

with you, we don't know where China is going. It could go in either direction.

Chairman LEVIN. Thank you.

Mr. Pitts, take over. Then others will participate. I need to go back to the committee. Thank you so much. So, each of you take five minutes.

Representative PITTS [presiding]. Thank you, Mr. Chairman.

Thank you, gentlemen, for your extremely informative testimony and your responses. I found it very interesting that there's something like 80,000 strikes of over 100 people, you say, of labor-type strikes. I assume that there are other types of protests as well, but this is hundreds every single day throughout China.

But thank you for your insight, Mr. Wang, for some very specific suggestions that we in Congress should press for. Very helpful. And Mr. Xiao, I found your incidents—you mentioned three examples of the government controlling the political impact of the Internet and I was intrigued especially—well China's most incredible mail house was very interesting, rescuing children from slave labor in the brick kilns. Then you mentioned an ant farmer's protest, a corrupt pyramid scheme. I'd be interested in knowing what that means.

And Mr. Fu, your two pages of recommendations are very helpful. I would just like to ask you, and each of you can comment if you'd like, in what way specifically has China's desire to maintain a positive image for the Olympics led to increased censorship of the press, the Internet, and repression of human rights? What would be the benefits, if any, of President Bush's attending the opening ceremonies of the Olympic Games, as he said he will do? What harm, if any, might his attendance cause, if you would care to comment on that? You can start. We'll just go down the line.

Mr. FU. That's one of the recommendations. I have been editing over the years. The vast majority of the Chinese independent house churches and other believers, they don't want to remain underground. Actually, they want to engage society, want to care for the poor, care for the vulnerable, care for the needy.

So one way that I think President Bush or any other senior U.S. official and Congressional leaders who visit China could benefit, is if you could persistently and firmly request that you want to sit in an unregistered church service, you want to sit and visit independent religious institutions, you want to worship with them. I mean, you don't need to even make a press conference or statement.

I think that shows solidarity with them and that will be a huge encouragement. Unfortunately, I found many Western diplomats and senior officials had some unfounded fear, like, "Oh, we will cause them trouble." If the Chinese believers and leaders are not afraid to meet and to fellowship together, what fear do we need to have?

Representative PITTS. In the run-up to the Olympics, have you seen an increased amount of repression on religious liberties?

Mr. FU. Absolutely. I mean, in just the last month, from the end of April until now, several thousands of believers in the City of Beijing have been raided. Ironically, many of them were holding prayer services for the earthquake and organizing the relief work when

they were raided, when their pulpits were knocked down and microphones were taken away from the pastors' hands.

Even on several occasions, as you mentioned, over 10 believers were arrested because they were traced by their donation checks that they sent for relief work just because they have the name "house church" and they were forced to pay a heavy fine.

Representative PITTS. Thank you.

Mr. Xiao, any examples of increased repression, and positive or negative on President Bush's visit?

Mr. XIAO. Well, let's first off say there has been an increase in online censorship and control of the media, all the way to the Olympics, controlling the image. With the Sichuan earthquake, there was a two-week exception but that was because of a natural disaster. That window quickly closed.

On President Bush's visiting China to attend the opening ceremony, it certainly is part of the U.S.-China relationship that they decided to do that. But there is an important message that should not be misinterpreted. While several other governments, including the European governments, are considering not attending the opening ceremonies because of the human rights performance on Tibet and other issues, the United States, as a leader of the free world, should not let its own visit, its attending, as otherwise. If President Bush is going, he needs to express his concerns on the human rights issues in China very clearly, otherwise it could be counter-productive.

Representative PITTS. Thank you.

Mr. Wang?

Mr. WANG. I came to America just several months ago and last year I was still in China. Last October, there was a warm-up race of Olympians in Beijing. I was under house arrest. The Olympic Games are a disaster for human rights in China. Dissidents, human rights activists, Christian activists, Falun Gong practitioners, and thousands of petitioners are being suppressed and monitored more heavily than before. I do not think the Olympic Games is just a sporting event. I disagree with this opinion.

The Communist Party of China, I think, will benefit a lot from the Olympic Games. If leaders of big countries in the Western world go to China to celebrate the opening event, it will be a great honor for the Communist Party. I can foresee that when the Olympics Games are finished, or even ongoing, the media is controlled. The media will say, how correct our leadership, how great is the Communist Party, it is the best time for our country. We should continue on the current path. I'm sure they'll say things like this.

Representative PITTS. Yes.

Mr. WANG. Thank you.

Mr. HAN. Mr. Bush going or not going to the Beijing Olympic opening really depends on what kind of message you are going to bring, and bring to whom. I'm sure I agree with everyone here that the Communist Party will be greatly appreciated if President Bush can go, but at the same time I heard there are many foreign media, particularly like Voice of America and Radio Free Asia, they will go, too. They will send their reporters.

For example, if President Bush goes to Beijing and he can give an interview to both Voice of America and Radio Free Asia, to use

these two free news channels to let the Chinese people know that President Bush is there not only for honoring the Communist Party and the Chinese Government politically, but is also concerned about human rights, and particularly if Mr. Bush can particularly discuss with the President of China, even for three minutes, about the concern about human rights in China, and through these free media deliver that to the Chinese people, that will be another way to look at this.

Therefore, I actually prefer President Bush to go to bring this message to the Chinese people rather than staying home. The Chinese Government would misinterpret this boycott as boycotting the Chinese people.

Representative PITTS. Thank you very much.

In the interest of time, members are invited to submit questions for the record to be answered on the record by witnesses.

I will turn to Mr. Honda.

Representative HONDA. Thank you, Mr. Chairman.

Given the time I won't ask a question, but I have two requests. The discussion from all four of you was very enlightening and insightful and provoked a lot of thought for me. In this country we have the Foreign Intelligence Surveillance Act [FISA] and your country has censorship. One is trying to control a democracy that has free speech, but tries to understand what's going on in the Internet and dragging through it to get information and we're trying to figure out how we control that. On the other hand, we have a country that's struggling for free speech and other things. So there are two countries coming from two different points of view, rule of law and rule of man.

If you wouldn't mind just jotting down some of your thoughts on what are lessons that could be learned from these two observations, if any. I'd appreciate some comments from you.

The second would be, the comment is, what I hear you saying is what reminds me of—and what you're saying is, you have to be very careful if you make a move on the Olympics because of how it's interpreted by the people who we're supposed to be wanting to help versus the image that we create here. So that image sort of reminds me of the Chinese character of crisis. There's two characters that we all know about, one is danger, the other is opportunity. It sounds like you're saying that there's an opportunity for us to be able to speak clearly on issues that we believe in at a moment of crisis so we can probably avoid misunderstanding. But I just have to say that your comments fall very heavily on me, and I think that it's been very helpful, at least for me. I appreciate your comments and your insights.

Representative PITTS. Thank you.

Mr. Smith?

Representative SMITH of New Jersey. Thank you. Again, in the interest of time, let me just collapse several questions, and whoever would like to answer them, please do.

First, I think it is clear, and you might want to comment on this, that the intent is to target terrorists. The intent of the secret police in China is to find the expression of free speech as it relates to democracy building, human rights, and religious expression. Even our Global Online Freedom Act makes it very clear that that's what

we're focusing on, to try to open up that part of the Chinese dialogue. Those individuals need the ability, without the secret police knocking on that door, dragging people off, as all of you have experienced, to a very dark night of torture. So, I would just raise that as a concern.

Let me just ask all of you, I held a number of hearings—and several of you testified—in the past. Mrs. Gao ran a family planning program in Fujing Province and got out of the country. Harry Wu expedited her coming to the United States. She made some very powerful statements about how much power the family planning cadres have, far and above most other aspects of the secret police, because of this one-child-per-couple policy being implemented.

My question is, what legal rights, what due process rights, what rights of appeal does a mother have, or mothers in China who are pregnant without government permission and are in the process of being coerced into having that child destroyed?

Second, let me ask the question—and I think this would go to Han Dongfang—you mentioned the role of Chinese labor unions, the role of NGOs. I think the U.S. Government needs to play a more robust role. Last year we—the AFL-CIO, John Sweeney—submitted a very powerful Section 301 case to the United States Trade Representative [USTR] asking for an investigation because of the enormous violations of fundamental labor rights in China. A very well-documented piece. Ben Cardin and I were the two Congressmen who co-signed this petition. I found it appalling that the USTR wouldn't even open up an investigation about occupation and safety violations, arrearages, and routine violations of labor rights.

Now, the Chinese individuals are taking great risk, as you did, to advance labor rights. It seems to me that there is a role that has been missed almost completely by the U.S. Government, and many other governments, when they wouldn't even investigate that this was an unfair labor practice. So, if you might want to touch on the role of U.S. corporations, the role of the U.S. Government, I would appreciate it.

On the Internet, again, the role of U.S. corporations, when Google, Yahoo!, Cisco, Microsoft, and others are complicit in partnering with the secret police, actually aid and abet the censoring—I asked the general counsel from Google, what is it that you censor, and he wouldn't tell me in an open hearing that I chaired three years ago. We heard a similar lack of responses from Yahoo! in a hearing that Mr. Lantos chaired just a few months ago.

It seems to me, if you're going to be part of a system, part of repression, there needs to be accountability, which is what we're trying to get at with the Global Online Freedom Act. So perhaps you might want to speak to this with regard to the role of U.S. corporations. They want to be on the side of at least neutrality, but not complicity with repression.

Finally, Mr. Fu, on the significant deterioration, I think that you bring to this Commission very damaging information, that the repression has gotten worse in the run-up to the Olympics. We know that cyber dissidents are being hunted down. The New York Times did a big story on it in January or February.

But the church people, I mean, what threat do they represent to the dictatorship with the run-up to the Olympics? Significant deterioration, as you put it. In your recommendations, you made several. They're all great. I've read them. I think they're outstanding. Would you also add perhaps that our office, our ambassador-at-large for the implementation of the International Religious Freedom Act [IRFA], needs to take China to the penalty phase?

As we all know, China is a country of particular concern. It is deteriorating, as you said. I think that also holds true for the Falun Gong, not just the Uighur Christians, as you pointed out, but the Uighur Muslims, and so many others. There needs to be a penalty phase pursuant to that legislation. They're on the list every year. What happens? Nothing. Or at least some jaw-boning, but nothing by way of a penalty phase. So, perhaps you could add that to your list or might speak to it.

The U.N. Human Rights Council. You mentioned the special rapporteur for religious intolerance. Well, the U.N. Human Rights Council has as a sitting member in good standing the People's Republic of China. What are they doing? They go after Israel. They focus like a laser beam on the alleged abuses of Israel. But what about the situation in China? They need to be held to account in that venue as well. You might want to speak to that.

Representative HONDA. Mr. Chairman, I think two gentlemen have to be at another hearing.

Representative SMITH of New Jersey. I know.

Representative HONDA. And two could stay. So I was hoping that they could respond to your great questions in writing. So, we can excuse two of them, and perhaps the other two could respond.

Mr. XIAO. Can I, briefly? I, unfortunately, need to go to the other Commission to answer precisely the same question, the Global Internet Freedom. Let me just briefly say, it is absolutely necessary to hold those companies more accountable, so therefore they're not part of the complicity of the censorship.

Representative SMITH of New Jersey. Thank you.

Would others like to answer other parts of those questions? Yes.

Mr. HAN. Obviously the Chinese people are acting, and it's not that they're just sitting there being exploited, and then these strikes and all these things happen. The farmers lost land and are not being compensated. They are taking actions, too.

Now, the question is, how can we better the system instead of, as I mentioned in the very beginning, the guy who lost his daughter and doesn't trust the government, who wants to use his own way to solve this problem, instead of having more people go that way of finding those who are responsible for the collapse of the school buildings and kill them, if we have more assistance to those who have no chance to go through the legal system, that will be a great help.

For example, there are many institutions in this country—the United States—that are really facilitating, supporting the democracy movement around the world. I believe these institutions, these organizations, their ability needs to be boosted up, particularly working on China. China, I believe, after the earthquake, after the Olympics, this country goes to the direction, there's no return. The government has to be more and more open, even sometimes when

they make two steps forward and one step backward. But there's no way for them to make a complete return.

So if we know this is the direction, the next 5 to 10 years will be the critical years for China in where to go. We have to jump out from the traditional way of thinking, which is only giving the Chinese Government pressure. But now the question is, the Chinese people are already standing up. How can we better assist the people to act on their own behalf rather than make this huge country depend too much on international pressure on the Chinese Government.

In other words, we should really put more trust on the Chinese people's power, which is the Chinese Government that cares more about them, cares more about them than the international pressure.

Representative SMITH of New Jersey. Mr. Fu?

Mr. FU. Let me make a comment. I totally agree with Mr. Han's optimistic tone, that the trend for the next 5 to 10 years is irreversible. Actually, you answered the question of how we accomplished that goal. I have firsthand observation and information and documentation indicating that it really takes the grassroots citizens, the weakening citizens, and the lawyers, the farmers, and these individual church believers that are willing to take up the task to bring this injustice, through this different—as flawed as it is, the judicial system.

I see we have already won several cases in the court. Two cases. Even the labor camp officials came to apologize to these unfairly treated or arrested church leaders. So that's some progress over there. I think today we have several distinguished recipients of the NED award last night. As Dr. Li Baiguang described himself like an ant, like a little ant, just little things at a time and gradually it's changing.

To answer your question about the power of family planning policy, I had firsthand experience. I remember when I was small, my sister-in-law got pregnant with the second child accidentally and she fled out of her home. I remember at midnight our house was broken into. These birth planning officials just took away my brother and put a big bag, what do you call it? A hood. And grabbed him and turned off the lights and just had three or four, used a big stick just to beat him up.

There's no appeal process. There's no one to whom you can file any complaint. They're almost outside the judicial system, with a super-ultra body with unlimited power to punish, to confiscate your property, they can destroy your own house and confiscate your cows, if you're farmers. In many cases, that's the only available items.

I think that is a very outrageous—for development of the rule of law. I, again, agree with Mr. Han about how, in the free world, instead of just the pressure, we should also empower—how to empower these human rights lawyers, how to use every tool at our disposal to help them, to equip them, to really encourage them by visiting them, hug them, send them a letter.

Representative SMITH of New Jersey. Mr. Fu, thank you very much.

Can I ask, if it's not too personal, what happened to your sister? Was she forcibly aborted?

Mr. FU. No. She actually was able to hide in a cave and had the second daughter born.

Representative SMITH of New Jersey. Let me just say, and this Commission I believe as well as the Congress, we all need to do more to bring more focus to that outrage. We know now beyond any reasonable doubt that there are huge numbers of missing girls. Not only are women being violated, men being beaten, fathers-in-laws and others are held in custody until the woman agrees to a voluntary abortion, but they're missing as many as 100 million girls in China. That's the upper estimate. The gendercide, which is like genocide, is like the forgotten human rights abuse. It's being enabled, like the U.S. corporations enable the Internet to do; rather than opening, it's closing.

The U.N. Population Fund and so many others have a hand-in-glove relationship and are now sharing that outrage with other countries, saying you, too, need a one- and two-child-per-couple policy, and you only get there through coercion and through involuntary activities on the part of the government. For a dictatorship, it's ready-made. So, I just raise that. Mr. Fu, thank you for sharing that personal story which I did not know about. Thank you both, and to our other two distinguished witnesses.

Mr. Pitts?

Representative PITTS. Thank you. You've been bombarded with questions in a very short period of time. You can submit further answers for the record. That would be very much appreciated. But you have given us a lot of very informative information, very helpful information. We thank the witnesses, we thank the members, the staff, and those who've attended.

We've exceeded our time, so at this time the hearing is adjourned. Thank you.

[Whereupon, at 12:20 p.m. the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENTS

 PREPARED STATEMENT OF HAN DONGFANG

 THE PROSPECTS FOR LEGAL ENFORCEMENT OF LABOR RIGHTS IN CHINA TODAY—A
 GLASS HALF FULL

JUNE 18, 2008

Everyday in China's manufacturing heartland, the Pearl River Delta, there is a strike or some form of labor dispute involving more than one thousand workers. At countless other factories in the region there are smaller disputes over low wages, non-payment of wages, overtime and benefits or management abuse and exploitation. Strikes and work stoppages are part of daily life in the Pearl River Delta. This is in spite of the fact that, under the current constitution of the People's Republic of China (PRC), workers do not have the right to strike. The daily strikes and protests have forced legislators in the delta boom town of Shenzhen to take a long hard look at local labor legislation and amend it in an attempt to placate the demands and grievances of ordinary workers.

In June this year, the standing committee of the municipal people's congress issued "Draft Regulations on the Growth and Development of Harmonious Labor Relations in Shenzhen Special Economic Zone." They represent a significant step toward redressing the current huge imbalance of power between labor and management in the region. In particular, the regulations stipulate that when a major strike breaks out, the government can order management not to take any action for a period of 30 days that is liable to exacerbate the dispute. As a local labor union official in Guangdong Province has pointed out in a recent article in the New Express newspaper, by clearly stipulating the rights and obligations of employers and workers, these Draft Regulations bring strike action within the scope of legal regulation, and as such, the legal right to strike is now "only one step away."

THE ROLE OF CHINA'S LABOR UNION

The pressure of workers' actions is changing the legislative landscape in China. Laws are being amended to better serve workers' interests. However, simply changing the law is not enough. For China's legal system to really develop, the law must be enforced, and workers must be allowed to exercise their legal rights to actively participate in the legal process. The new Labor Contract Law gives prominence to the use of collective labor contracts as a means of fostering more harmonious labor relations in the workplace. There is a crucial role to be played here by China's sole legally permitted union, the All China Federation of Trade Unions (ACFTU), in both ensuring the law is respected and implemented, and in bringing workers into the negotiation process for collective labor contracts—factory-wide, legally binding contracts covering the wages, overtime payments and benefits of all employees.

Unfortunately, the ACFTU has so far been more focused on fulfilling quotas and meeting targets than in effectively representing workers, and has tended to impose collective labor contracts in a top-down manner and with little regard for the actual needs and conditions of the enterprise concerned. However, at the local level, there are ACFTU officials—people who have the difficult job of actually ensuring greater social and political stability at the grassroots level—who realize that developing worker participation in the negotiation process is the only effective way of ensuring that a collective labor contract has any real meaning. They understand that if the workers are not involved, the contract cannot reflect their demands and therefore will do little, if anything, to address or resolve problems on the factory floor.

By actively encouraging worker participation, the ACFTU would both improve its own, currently very limited, credibility as a genuinely representative workers' organization, and help develop respect for and confidence in the law among workers. The PRC has a wide range of labor legislation dating back to the 1992 Trade Union Law and the 1995 Labor Law, which give China's workers basic legal rights. These rights have been enhanced by the new Employment Promotion Law and Labor Contract Law, both of which went into effect on January 1, 2008, and by the Labor Dispute Mediation and Arbitration Law, which was enacted on May 1, 2008. The promulgation of three major labor laws in one year indicates just how effective worker action has been in forcing the government's hand. These laws have not been introduced because the government is particularly enlightened, but because workers' strikes and protests against widespread and continued rights violations left the government with no option but to change the law, as a means of forestalling increased labor con-

flict. In other words, China's emerging labor movement, although still spontaneous and unorganized, is already acting as a positive force for change.

CHANGING THE LEGISLATIVE LANDSCAPE ACROSS CHINA

It is not just at the national level and in relatively progressive areas such as Shenzhen where the legislative framework is changing. Local and regional governments across China are responding to rapidly changing economic and social conditions and workers' demands by introducing new labor regulations and provisions designed both to protect workers' rights and to improve relations between labor and management. The provinces of Hebei, Liaoning, Jiangsu, and the cities of Beijing, Shanghai and Shenyang, for example, have all recently introduced new regulations on the promotion and implementation of collective labor contracts.

Hebei took the lead in this process by introducing its Regulations on Enterprise Collective Consultations between Labor and Management on January 3, 2008. The regulations specify that the negotiation process between labor and management "should be open and equal, seeking consensus, and giving equal weight to the interests of the enterprise and the workers, safeguard workers' actual pay levels, and conform to enterprise productivity levels and local economic conditions." The Shenyang regulations even make it compulsory for employers to accept workers' requests to conduct collective negotiations over the terms and conditions of employment, and substantial fines are specified for companies and CEOs that refuse to do so.

Significantly, the Hebei regulations explicitly state that where there is no labor union at the enterprise, the workers' representatives in the negotiations should be "democratically elected by a majority of employees." Where there is a labor union, representatives should be "recommended" by the union, and scrutinized by the workers' congress. (Currently, the majority of private-sector workplaces still have no official union presence.) The regulations outline in detail the scope of the negotiations, which focus on wage levels but include a wide-range of pay and benefit related issues, including methods and times of wage payment, subsidies and allowances, holidays, sick leave and maternity leave, as well as the length and conditions of renewal of the collective labor contract. They specify that the workers' remuneration agreed in the collective contract can not be lower than the local minimum wage, and that the remuneration specified in individual workers' contracts can not be lower than the terms specified in the collective contract.

LABOR RIGHTS LITIGATION

The problem for workers in China is not a lack of legislation; it is a lack of legal implementation and enforcement. Many workers believe that the law only exists on paper and lacks real force to protect their rights. In 2003, China Labour Bulletin (CLB) set up its Labor Rights Litigation Project, to demonstrate that, even if local government agencies are unwilling to enforce the labor laws, ordinary Chinese workers can use that legislation to protect their rights in a court of law. CLB provides workers with local lawyers to represent them in civil and administrative actions against employers and local government authorities, or—in cases where worker activists have been detained by the police—in mounting an effective court defense for them against the criminal charges involved.

It is often assumed that there is little or no judicial independence in China. While this is certainly still true in politically sensitive cases, in the majority of labor rights cases, the courts nowadays tend to deal with cases impartially and to render verdicts on the basis of the law. In many cases, the labor rights violations are so blatant and egregious that the judge has no option but to rule in favor of the plaintiff. And over the last two years, workers, in particular migrant workers, have been winning larger and more significant awards. The Shenzhen Commercial Daily reported that on October 16, 2007, a 36 year old migrant worker was awarded 440,000 yuan (approximately \$50,000) in compensation by a court in Shenzhen after being paralyzed in an accident on a construction site the previous year. The award was more than twice the government's recommended compensation for the families of workers killed in coal mining accidents. Other recent cases have significantly broadened the scope of labor rights litigation. The Southern Daily reported that on October 22, 2007, a Guangdong court awarded a migrant worker named Song 45,000 yuan in compensation even though he had signed a contract waiving his rights to work-related compensation. The court deemed the contract to be invalid.

Probably the most widespread grievance among migrant workers is the issue of non-payment of wages. However, workers' attempts to claim wages in arrears through the arbitration and court systems have been hampered by a common misunderstanding of China's Labor Law. Article 82 states that: "In raising an arbi-

tration claim a party should make a written application to the Labor Dispute Arbitration Committee within 60 days of when the labor dispute first occurred.” Many legal and government officials have assumed this stipulation meant claims for wages in arrears could only be for two months at the most. However, according to the Southern Workers’ Daily, in December 2006, a Shenzhen court awarded a migrant worker named Hu two years worth of unpaid overtime wages, totaling more than 46,000 yuan.

FACILITATING MEDIATION, ARBITRATION AND LITIGATION

The main problem for workers seeking legal redress for violations of their rights is not, in most cases, a lack of judicial independence; it is simply that they cannot afford a lawyer. As such, CLB is committed to paying the legal fees for workers who are unable to pay for their own lawyer. Over the last 15 months, CLB has taken on 274 labor rights cases, and provided about \$87,000 in fees to law firms and individual lawyers in China who specialize in workplace discrimination and work-related injury cases, as well as those handling disputes over the non-payment of wages, pension, redundancy and economic compensation cases. The great majority of cases concluded have been successful and many have resulted in substantial compensation awards for the plaintiffs. Over sixty cases have been concluded so far, mostly via court litigation, and provisional verdicts and compensation awards have been handed down in an additional 104 cases. The worker plaintiffs lost in fewer than ten of these cases. In all the rest they won compensation for industrial injuries, recovered wages in arrears, gained job reinstatement or obtained other benefits such as labor insurance payouts. The total amount of compensation (confirmed or provisional) and other benefits obtained by workers was 3.8 million yuan (about \$547,000).

In addition, CLB last year helped obtain 7.2 million yuan (\$1.02 million) in wages in arrears for about 2,000 construction workers who had been staging a week-long public protest. Mediators in the dispute not only diffused the protest but successfully negotiated a settlement with local government officials, demonstrating that mediation and other non-adversarial dispute resolution techniques are just as important as litigation in developing a civil society in which legal contracts between employers and employees are honored. Indeed, mediation is often preferable to litigation, which tends to be a measure of last resort used after a labor dispute has become irreconcilable.

THE KEY ROLE OF NGOS IN CREATING A CIVIL SOCIETY

The role of non-governmental organizations (NGOs) and civil rights groups in China has been, and will continue to be, crucial in the development of the country’s legal system. The Beijing-based group Yirenping, for example, is actively involved in raising awareness of HIV/AIDS and Hepatitis B (HBV) discrimination in China. It has published a handbook informing people with HBV how to protect their rights, it runs an online support group, and most significantly for labor rights protection, it intercedes in cases where workers have been sacked or refused employment because of their HBV status. Yirenping has helped to bring dozens of anti-discrimination lawsuits and has already obtained significant compensation awards for the plaintiffs. Regrettably, however, many of these compensation awards are subject to confidentiality clauses and cannot be made public.

In addition to winning compensation for individual plaintiffs, Yirenping’s advocacy has also helped change the legislative landscape. On April 2, 2008, a university graduate denied employment at a computer firm in Shanghai because of his HBV status was awarded “satisfactory” compensation through a confidential court-mediated settlement. The same day, local media reported that the Shanghai Public Health Bureau had stipulated that HBV testing would no longer be routine for prospective employees and that the city’s medical examination forms were being modified accordingly. The bureau added that prospective employees could only be tested for HBV if the examinee requested it or if the employer proved that the job advertised was legally off-limits to people with HBV. China has an estimated 130 million carriers of the HBV virus, so these lawsuit-driven reforms have a huge potential impact.

Earlier, on May 18, 2007, the Ministry for Labor and Social Security and the Ministry for Public Health issued a joint circular, “Regarding Views on the Protection of HBV Carriers’ Right to Employment,” clearly stipulating that apart from specific industries where national laws, administrative regulations and Ministry of Health regulations have identified a higher risk of transmission of HBV, employers cannot refuse to hire, and cannot dismiss, employees on the basis of their HBV status. The Employment Promotion Law, which went into effect on January 1, 2008, further

stipulates that employers “cannot reject applicants on the basis of their carrying an infectious disease.”

KEEPING THE SUPPORT AND GOOD WILL OF THE PEOPLE

It is clear that the Chinese Government has, to some extent, been more willing than in previous years to listen to its citizens when they voice dissatisfaction and grievances, and to make changes to the law designed to enhance and safeguard their legal rights. In the wake of the terrible earthquake of May 12 this year, the government has garnered a tremendous amount of good will from the Chinese people. It is imperative that Beijing maintains and utilizes that good will by making sure its citizens are included in the future development of civil society. In other words, the government must seek to strike a better balance between the need for economic growth and the interests of social justice.

In the area of labor rights, this means workers exercising their rights by establishing genuinely representative labor organizations and participating in collective bargaining with management. On an individual level, workers must be encouraged and assisted to use the existing and wide-ranging canon of labor legislation in China to demand mediation or arbitration or to bring law suits against employers for violations of their rights. In addition, the active support and involvement of civil rights groups in defending workers rights will be crucial in the development of a functioning civil society in China.

Several questions remain. How can China establish the nuts and bolts of a genuine collective bargaining system? Will that system allow workers to negotiate wage agreements that reflect the true value of their labor and not just—as tends to be the case today—the legally mandated minimum wage? Will the ACFTU embrace the system or simply sit on the fence, an increasing irrelevance to the real issues?

The Chinese Government has a historic opportunity to create a system of peaceful negotiation between labor and management in which both sides respect each other, the negotiation process and the resultant legal contract. If it has the vision and courage to do so, Beijing will take a significant step toward realizing its own goal of creating a “harmonious society,” one in which citizens not only have confidence in and respect for the law, but also are active participants in the legal process and play a role in promoting greater social justice for all.

PREPARED STATEMENT OF WANG TIANCHENG

JUNE 18, 2008

In 1978, Deng Xiaoping initiated China’s “Reform and Opening Up.” One of the most important aspects of reform is the strengthening of the construction of the legal system. In the past 30 years, the primary reflections of progress in the legal domain have been in the following three areas: First, the formulation of a large number of laws and the establishment of a relatively complete body of laws that covers a variety of fields. In the era of Mao Zedong, China only had a small number of laws. Today it is already becoming difficult to clearly calculate exactly how many laws and regulations there really are. Second, the fostering of over a million talented legal specialists and the establishment of an approximately 140,000-person-strong contingent of lawyers. With the exception of the lowest levels of courts (that is to say, the county-level courts), the majority of other courts’ judges have now received higher education in legal disciplines. Third, the successive establishment of many law schools and legal departments. Up to today, there are already 600 such schools and departments. It is becoming more and more difficult for graduates of law schools and departments to find work.

The above progress is related to active promotion by the government. There has been additional progress, but it is in no way the result of active government promotion. However, I believe it will have a significant influence on future legal reform. This is the change in thinking of legal researchers and educators, as well as the thinking of Chinese society as a whole. Jurists’ thinking is increasingly liberalized, and there are more and more people who dare to candidly express their thoughts. In the past 30 years, jurists have performed a special role in the improvement of Chinese legislation and certain laws, and I believe this sort of role will continue.

However, as long as the one-party autocratic political system does not change, one should not overestimate jurists’ role in future Chinese legal reform. Jurists can facilitate some small changes and repairs to Chinese law, but will not be able to make it develop into a free body of law.

In the legal domain, China faces three very serious problems: one, there exists a set of laws and systems which deprive citizens of basic human rights and free-

doms; two, the judiciary is not independent and is controlled by the Communist Party and administrative departments; three, the government, as the enforcement mechanism, does not receive outside supervision. These three issues are all products of the one-party autocratic political system.

The largest obstacle to China establishing rule of law and ensuring human rights is the one-party autocratic political system. How to facilitate this kind of transformation of the political system is the crux of the issue. I certainly don't believe that small changes to Chinese law, effected in dribs and drabs, will eventually lead to the democratization of China. However, I believe that criticizing the Chinese laws and institutions that oppose human rights, and creating pressure from public opinion, is beneficial to accelerating the arrival of democratization.

I think the greatest impetuses for accelerating the reform of Chinese law in the direction of guaranteeing human rights are the people within China's dissatisfaction with reality and the gradual increase in their desire and call for democracy, human rights, and rule of law. At the same time, pressure from the international community is also extremely important.

From a viewpoint of ensuring fundamental human rights and facilitating a transformation to democracy, I hereby raise the following suggestions to each respected Member of Congress:

First, urge the Chinese Government to ratify the United Nations' "International Covenant on Civil and Political Rights." The Chinese Government already signed this convention in 1998, but 10 years have passed and it has still not been ratified. If the Chinese Government ratified this convention, you could then take the next step and request that it amend or abolish the laws that conflict with the convention.

Second, you not only need to follow individual cases where the Chinese Government infringes on human rights, you also need to monitor the relevant legal articles and texts and point out where they are in opposition with human rights. If the laws and system do not change, the Chinese Government's softening or changing in certain individual cases does not indicate improvement in the state of human rights, because similar incidents involving human rights infringement will still occur.

Third, please monitor with particular focus the following laws and institutions that are in opposition to human rights:

1. The assembly and demonstration law. This law was passed in October 1989, which was four months after the June 4th massacre. According to this law, assemblies and demonstrations must first obtain police approval. In reality, the freedom of assembly and demonstration has been abolished.

2. The provision in the Criminal Law related to the crimes of plotting to subvert state power and inciting subversion of state power. The PRC Criminal Law does not have the use of violence or propagating the use of violence as a prerequisite for engaging in this type of crime. All the people who have been penalized under these charges were those who published expressions of opinion criticizing the government, or were people exercising their right to freedom of association and demonstration.

3. The "Regulations on Religious Affairs" issued by China's State Council. These regulations were passed in 2004, and they endowed the government with the power to interfere with religious groups and religious activities, the main purpose of which was to suppress the rapid expansion of Christianity within China in the past few years.

4. The Reeducation Through Labor system. This is a kind of forced labor punishment which deprives people of their personal liberties. In fact, it is no different than being sentenced to prison, but it does not go through a trial in a court of law, and the police agencies are the sole decisionmakers. This has already been going on in China for decades. Mao Zedong used it in the past to persecute hundreds of thousands of so-called "rightists." Today, every level of government in China frequently uses it to persecute dissidents, Falun Gong practitioners, Christian preachers, and an immense number of petitioners.

5. The state of detention centers. In China, once a person enters a detention center, he is completely cut off from the world. His family cannot go to visit him, and it is difficult for his lawyer to see him. No one knows what the police might do to him. And yet, the most important stage in the criminal procedure is exactly this stage. The police will interrogate him time and again. The trial in a court of law is often just a formality.

Fourth, urge the Chinese Government to establish an effective system for investigating constitutional violations. This is, to establish a constitutional court or to allow ordinary courts to accept cases concerning the Constitution, to investigate whether laws or administrative orders violate the Constitution, and to provide citizens with the new possibility of safeguarding their rights. The PRC Constitution

promises various basic human rights and freedoms, but the legal and regulatory system nullifies them.

Finally, I have one last statement: having the Chinese Government accept these criticisms and demands is certainly not easy, but I believe that unremitting criticism and pressure might eventually obtain results, and benefit the facilitation of democratization in China.

PREPARED STATEMENT OF XIAO QIANG

THE RISE OF RIGHTS CONSCIOUSNESS AND CITIZEN PARTICIPATION ON THE CHINESE INTERNET

JUNE 18, 2008

Chairman Sander Levin, Co-Chair Byron L. Dorgan and Distinguished Commission members, my name is XIAO Qiang. I am the Director of the China Internet Project and founder of the online news portal China Digital Times at the Graduate School of Journalism of UC-Berkeley. It is a privilege for me to be speaking in front of this important commission, and alongside my distinguished fellow panelists. My talk today will focus on the rise of rights consciousness and citizen participation on the Chinese Internet, despite the Chinese Government's intensified control in this regard.

First, let me start with some basic facts on the development of the Internet and related wireless technologies in China.

By the end of 2007, the number of Internet users in the country had rocketed to 200 million, gaining 73 million new users in just 12 months, according to the government-run China Internet Network Information Center (CNNIC).

According to the CNNIC's statistics, Chinese Internet users are very young: about 51 percent of them are under age 25, and 70.6 percent of them are under age 30. The Internet population is also relatively well-educated, with more than 40 percent holding college or university degrees. Their education level contributes to the degree to which they participate in public affairs online.

The rise of blogging, instant messaging, and social networking services such as QQ, and search engine and RSS aggregation tools such as Baidu (www.baidu.com) and Zhuaxia (www.zhuaxia.com), have given Chinese netizens an unprecedented capacity for communication. Internet Bulletin Board Systems (BBSs) play a particularly important role in Chinese Internet life. According to research data from the beginning of 2008, 80 percent of Chinese sites are running their own BBSs and the total daily page views are over 1 billion, with 10 million posts published every day. By the end of 2007, China had more than 1.3 million BBSs.

At the same time, blogging activities have also exploded. Like BBS, blogging also has a very low entry cost—anyone with Internet access can open a blog on a hosting service. According to CNNIC, “By the end of November 2007, the number of blog spaces has reached 72.82 million in China, and with 47 million blog writers, it is reaching one-fourth of the total netizens.” While most posts are personal, an increasing number of bloggers writing about public affairs have become opinion leaders in their local communities.

In addition to BBSs and blogs, chat rooms and instant messaging services such as QQ or MSN are also extremely popular online applications. A research report by Analysys International on China's Instant Messaging Market reveals that in the third quarter of 2007, active accounts of Chinese users numbered 388 million, with QQ being the most popular, and the highest number of users online at the same time reached 19.5 million. These instant messaging services play a crucial role to connect Internet users, communicate information, and coordinate actions through social networks. Finally, new photo and video sharing sites such as Yuku and Tudou are the fastest growing online applications. According to Peng Bo, deputy director of the State Council Information Office, “Eighty percent of China's 210 million Internet users have used these services.” The richness of images, video, and sound online has created a powerful media space where millions of users can themselves be content producers, distributors, and the audience.

I have given testimonies before this commission on the state censorship and propaganda mechanisms over the Internet in the past. In general, the Chinese Party-state has been quite effective in controlling the political impact of the Internet by developing a multi-layered strategy to control Internet content and monitor online activities at every level of Internet service and content networks. However, beneath the surface of these constantly increasing and intensified control measures, there is a rising level of public information and awareness in Chinese society. Today, my

presentation will focus on examples and analysis of an emerging social and political phenomenon.

First, let me start with three examples in 2007:

(1) Defending Rights: Chongqing Nail House

A property dispute that erupted in Chongqing in 2007 provides a window into how this process works. On February 26, 2007, a netizen from Chongqing posted a distinct photograph of a two-story house, sticking up like a giant nail in the middle of a construction site. Within days, all major BBSs posted this photo with questions and commentaries from netizens. The house, whose owners were refusing to relocate to make way for a new development, was soon named by netizens as “China’s Most Incredible Nail House.”

Because the image was quite dramatic and touched upon the common problem of urban construction, property rights, and forced evictions, official media soon jumped on the story. The house owners were successful and articulate entrepreneurs, who became media celebrities for their stand. The story broke just as the National People’s Congress was passing a new property rights law that purports to protect individual homeowners, so the official media turned the story into a sample case under the new law, framing it as a middle-class couple standing against a powerful alliance of local officials and developers.

The story soon became the hottest story on China’s Internet. Sina.com, China’s largest Internet portal, offered a monetary award for digital images and videos that caught the developments in the story. Mop.com, one of the most popular online forums ran a real-time monitoring page. When the local court reached a verdict that the couple must leave their house or be forcibly removed, the husband carried a huge red banner reading “defending human rights according the law” in front of media cameras. His actions gained empathy from a public frustrated by their feelings of powerlessness in the face of business and government interests, and therefore generated huge online support. Facing heated public opinion, the local court delayed their eviction so days after the deadline, the house still stood in the public eye.

The central government weighed in to limit reporting on this topic after the couple disobeyed the court order and refused to move. As journalists for official media were no longer allowed to report the story, many netizens took on the reporters’ role to cover it, using digital cameras and cell phones to follow the fate of the house and keep the story alive. Despite the reporting ban, many print and broadcast media continued to run commentaries and discussions on this case, exploring its relationship to the Property Law. Under public pressure, the developer finally settled the case and compensated the couple for their property, which was eventually destroyed. The case vividly illustrated the pressure faced by local officials when millions of individuals come together through the Internet, especially when the official media also comes on board.

(2) Hunting Down Injustice: Shanxi Brick Kilns

Often government control over a story is not a black-and-white issue, as there can be official reasons to acknowledge some elements of a story while censoring others. A good example of this dynamic is the exposé of widespread slave labor in brick kilns in Shanxi Province. The story started with a group of fathers from Henan Province who ventured to Shanxi Province to rescue their children, who had been abducted and illegally forced to work as slaves. After rescuing around 40 of an estimated 2,000 children, the fathers’ efforts were obstructed by the local police, who, it was later discovered, were in alliance with the kiln owners. After obtaining no response from the government, the fathers published a moving open letter on June 7, 2007, on Tianya Club, one of the most-viewed Chinese online forums. The letter spread through the Chinese blogosphere and ignited national outrage. Reports in the official media followed and soon top Party officials including General Secretary Hu Jintao and Premier Wen Jiabao publicly expressed their concern over the issue.

After the top leadership weighed in on the case, local and central Chinese media carried waves of horrifying stories about the brick kilns. The Internet further circulated the media reports, bloggers’ comments and analysis, and photos of missing children, and the public began asking more and more critical questions about how this could happen in 21st century China. Investigations into the case soon revealed that local Party officials and police profited from such kidnapping and slavery operations. Facing the rising public questioning over the root of slave labor in China, the Internet Bureau of the CCP Central Office of External Communication sent out the following notice to all “External Communication Offices” and “Central and Local Main News Websites” on June 15, 2007:

Regarding the Shanxi “illegal brick kilns” event, all websites should reinforce positive propaganda, put more emphasis on the forceful measures that the central and local governments have already taken, and close the comment function in the related news reports. The management of the interactive communication tools, such as online forums, blogs, and instant messages, should also be strengthened. Harmful information that uses this event to attack the party and the government should be deleted as soon as possible. All local external communication offices should enhance their instruction, supervision and inspection, and concretely implement the related management measures.

While trying to keep online public opinion under control on one hand, the central government also took action against kiln owners and officials who had been implicated in the slavery, sending 35,000 police officers to raid 7,500 kiln sites and penalizing 95 local officials. The state also turned the incident into a positive public relations play, publicly displaying their response to the specific crimes that had been committed, while suppressing other sharper critics and persistent investigations into the related deeper societal problems.

(3) *Silenced: Ant Farmers Protest*

While the cases above demonstrate the weaknesses in the official Internet censorship, we should not forget that the government is still able to exert almost near control over information distributed online in particularly sensitive cases where officials make that a priority. In November 2007, 10,000 people demonstrated in front of local government offices in Shenyang, Liaoning Province, against a corrupt pyramid scheme, through which up to a million people, mostly poor or unemployed workers, had invested their life savings but received nothing when the company went bankrupt. The story was politically sensitive because the company, Yilishen, had ties with powerful officials including Bo Xilai, the former governor of Liaoning Province and current Minister of Commerce, as well as because of the mass protests that it inspired. The central government quickly imposed a complete news blackout on reporting about the incident. For a period, news about the scheme and subsequent protests could not be found through searches on the Chinese Internet. Once the foreign media began covering the case, those news reports found their way back into online forums, but were censored before they could be distributed in a mass way that reached the mainstream of Internet users.

The examples of the Chongqing nail house and the Shanxi brick kilns point to early signs of a changing dynamic: First, the stories initially broke online, and were later carried by the traditional media. In this process, thousands, sometime hundreds of thousands of public-minded bloggers and some journalists also played a critical role in amplifying these messages. Second, despite government censorship efforts, the sheer speed and number of messages and Internet posts distributed made it impossible for censors to stay ahead of the game. The timing gap between the information cascade and top down censorship instructions was key, as was the gap in control between central and local authorities, which in these cases allowed local events to become national news and make it into the centrally-controlled media. Once sensitive stories are carried by the official media, the Internet plays a role of amplifying and keeping stories alive, thus creating a big public event. Yet the Yilishen story also shows us that when it is a political priority, the central government still has the means and the will to exert almost complete control over information online.

Now, I would like to provide some analysis on the political impact of such online phenomenon.

Beijing-based Internet expert, Hu Yong, has written: “Since ordinary people now have the means to express themselves, ‘public opinion’ has finally emerged in Chinese society. Since China never had mechanisms to accurately detect and reflect public opinion, blogs and BBSs have become an effective route to form and communicate such public opinions of the society.”

For those both in and outside of the government who want to see deeper and more fundamental political change, the rising online public participation is an indicator that the rules of the political game in China have started to change. Xiao Shu, a commentator in Southern Weekend magazine has written about this process:

The process is . . . to discover public events, follow public events, publicize the truth of those public events, and the logic behind and value within those events; for the public to discuss, form a consensus in the society, and then change the current rules of the game according to such consensus.

. . . Through SARS reporting we have established a new principle, which is that information must be public when there are matters of public security in such a crisis. Through the Chongqing Nail House event we are also changing the current rules of the game of building and evictions. Through Xiamen PX we

are also changing a rule of the game, this time is to establish the following principle: before major public projects undergo construction, all people who would be affected by such a project must be consulted, and their permission granted.

CONCLUSION

The CCP's censorship of both traditional media and the Internet is certain to continue. However, the rise of online public opinion shows that the Party-state can no longer have total control of the mass media and information environment. The Internet is already one of the most influential media spaces in Chinese society—no less than traditional forms of print or broadcasting media. Furthermore, through online social networks and virtual communities, cyberspace has become a substantial communication platform to aggregate information and coordinate collective actions.

What we have seen is an emerging pattern of public opinion and citizenry participation, which represents a power shift in Chinese society, as recent news events, from the Chongqing nail house, to slave labor in the Shanxi brick kilns vividly demonstrated. The Internet allows the increasing number of netizens to propagate, comment on and promote certain topics (albeit limited) from a local platform to the national stage, and many such “public events” now play a role in promoting human rights, freedom of expression, rule of law, and government accountability.

Furthermore, some of China's more outspoken media such as Southern Metropolis Daily or Southern Weekend are also actively expressing much more liberal political ideas and pushing the envelope whenever they have a chance. Before the Internet, such reform-minded discourse was often vulnerable in the face of the domination of CCP's hegemonic propaganda. Now, however, as these more liberal elements within the established media converge with independent, grassroots critical voices online, they create a substantial force that is slowly eroding the party's ideological and social control.

As we have also learned from the series of news events leading up to the Beijing Olympics—from protest riots and the government crackdown in Tibet, the rise of nationalism among Chinese inside and outside the country in response to international human rights criticism, and the tragic Sichuan Earthquake and the unprecedented response to it from the Chinese Government, media and citizens—information and communication technologies are playing a critical role in facilitating social and political action in China. The Chinese Internet is still a highly contested space. The authoritarian CCP regime is learning to be more responsive and adaptive in this new environment. Likewise, the Internet has also become a training ground for citizen participation in public affairs. This process could have profound and far-reaching consequences within China, as well as for China's emerging role in the global community.

PREPARED STATEMENT OF XIQU “BOB” FU

CHINA'S PERSECUTION OF PROTESTANT CHRISTIANS DURING THE APPROACH OF THE BEIJING 2008 OLYMPIC GAMES

JUNE 18, 2008

INTRODUCTION

The approach of the Beijing 2008 Olympic Games has been accompanied by a significant deterioration in religious freedom for China's unregistered Protestant Church, also known as the house church. At the end of 2007 President Hu Jintao made statements that China has a policy of religious freedom. However, in May 2008, two independent sources informed China Aid Association (CAA) that the Ministry of Public Security has received funding from the Chinese Central Government to increase its campaign of eradicating house churches throughout China. Abhorrent abuse of religious believers continues, and regular raids of Christian meetings take place. Persecution includes the largest mass-sentencing of house church leaders in 25 years, a level of expulsion of foreign Christians not seen since the 1950s, and targeted repression of the Chinese House Church Alliance. Also, reports have been received of planned intensified persecution, with greater control and prevention of large Christian gatherings also anticipated: it is further feared that harsher persecution will take place after the Olympics.

It is vital for Western analysts to realize the destructive control—contrary to rhetoric otherwise—wielded by the Chinese Government in religious matters, and to recognize the extent to which this recent crackdown has permeated into various aspects of society. This report focuses on increased persecution especially in Xinjiang

Province and Beijing, and on the restrictive measures affecting business, foreigners in China, and even individuals offering aid to earthquake survivors. Furthermore, the misuse of the legal system as demonstrated in numerous cases serves to highlight the deterioration in the rule of law in China. Another important development is that many Chinese independent religious groups including house churches are welcoming everyone—including the Chinese president, foreign statesmen, and diplomats—to attend their services. Understanding this development is vital to overcoming misunderstandings or unfounded fear by some Western diplomats and governments: the Chinese themselves do not fear to simply attend (so what fear do the western visitors have?), while persecution continues as a strong, underlying current to active participants. Western recognition of the increased religious persecution surrounding the Beijing 2008 Olympic Games is a key factor for reversing the current trend, and it is encouraged that the recommendations included in this report be used in dialogue with China.

BACKGROUND

The Restricted Official Churches: China permits the operation of the official, registered churches. This government-sanctioned organization, called the Three Self Patriotic Movement (TSPM), suffers restrictions on selection and training of clergy, location of venues, publications, finances and relationships with Christians abroad. There are also restrictions on working with certain classes of people, including those under age 18. Religious education in government-sanctioned seminaries is severely restricted.

The Persecution of the Unregistered Church: Because of the atheistic government's control of TSPM churches, most Christians choose to worship in unregistered churches. However, those belonging to unregistered, and therefore illegal, groups can face many difficulties, including being harassed, humiliated, fined, tortured, imprisoned and subjected to forced labor. Physical assault has left Christians injured, hospitalized and disabled. Meetings have been forcefully dispersed, unofficial church buildings destroyed and property confiscated. New government regulations that came into force in March 2005 renewed the drive to enforce registration. Because their faith is not recognized as belonging to an official religion, members of unregistered churches can be classified as cults, along with less conventional groups, and can therefore come under particular attack and be subjected to harsh penalties.

The Limitation of Bibles and Christian Literature: The Chinese Government allows only The Amity Foundation in Nanjing to print Bibles and a limited selection of Christian materials. These Bibles are distributed only through the TSPM churches, making it difficult for house church Christians to obtain Bibles and other Christian materials. It is illegal to sell Bibles at public bookstores and other public facilities. Amity's production is insufficient to meet the needs of the burgeoning Christian population.¹ Pastors who have printed Bibles and Christian literature to fill the unmet needs have been arrested and imprisoned.

TRENDS OF THE PRE-OLYMPIC CRACKDOWN

Overall Increased Persecution: In assessing persecution trends, CAA reported a rise of 18.5 percent in the numbers of Christians persecuted last year compared with the previous year, and an increase of 30.4 percent in persecution cases. The analysis highlighted the level of persecution occurring in urban areas, reporting that just under 60 percent of persecution cases occurred in such areas. The assessment also highlighted the ongoing targeting of house church leaders, with 415 reported arrests of such leaders last year.

Persecution Specific to Xinjiang: In April 2008, CAA reported that Chinese Government officials had launched a strategic campaign, called the "Anti-illegal Christian Activities Campaign," against house church members in Xinjiang. While both Han and Uyghur Christians have been targeted, the plight of the minority Uyghur Christian population is especially harsh as they face persecution on the grounds of both their unusual religious faith and the broader ethnic persecution of the Uyghur people in Xinjiang. Even the limited religious freedoms protected elsewhere in China are further restricted in Xinjiang and there have been repeated arrests and mistreatment of Christians in Xinjiang over an extended period. Of particular con-

¹Precise figures for religious believers in China are impossible to obtain. Estimates of house church figures range from 40 million to over 100 million. In January 2007 CAA issued news that a reliable source had informed that Mr. Ye Xiaowen, the director of the State Administration for Religious Affairs, had stated in two internal meetings at Beijing University and the Chinese Academy of Social Science that there are now 130 million Christians in China, including 20 million Catholics.

cern is the use of national security and separatism charges against religious believers, even as recently as May 2008.

Persecution of Unregistered Churches in Beijing: During May 2008, significant measures were taken against key unregistered churches in Beijing. Chinese house churches have long suffered persecution, but this is believed to be the first time that authorities have cracked down systematically on these Beijing churches which have members from among the more educated and wealthy strata of society who have greater awareness of their rights. (These churches generally meet in urban areas and were previously tolerated, even though operating with certain restrictions.) Three recent instances of such persecution follow:

On May 9, 2008, Pastor Dong Yutao, a leader of one of Beijing's largest house churches, was arrested while on his way to collect a shipment of Bibles. The Beijing Public Security Bureau (PSB) placed him under criminal detention for receiving illegally printed Bibles and religious literature.

On May 11, 2008, policemen and detectives broke into the regular worship service at Beijing's Shouwang Church. A plain-clothed law enforcement officer showed his identification from Haidian District Bureau of Ethnic and Religious Affairs and ordered the church to stop its activities. Members of the church were ordered to leave the premises as the gathering was illegal.

On May 25, 2008, various house church gathering sites connected to the 1,000-strong Beijing Gospel Church were raided by officials from 4 different government agencies, including the Bureau of Ethnic and Religious Affairs. Officials forcibly entered and searched the homes of house church members without presenting search warrants or proper documentation and proceeded to confiscate religious materials. Some of those targeted sustained minor injuries from violence by the officials. Victims of the attacks described the incident in an open letter to government officials in which they cite various laws which have been breached.

Increased Measures To Prevent Property Rentals to Unregistered Groups: Many house churches were already being pressured to stop gathering or to leave Beijing by September 2007 when CAA reported a new restriction as described by Beijing Evening News on September 5: per direction of the Beijing Municipal PSB, police were to conduct inspection, and to warn owners of rental properties that they should on their own initiative refuse to rent their properties to "five types of prospective tenants," including people who are accused of engaging in the so-called "illegal religious activities." According to numerous reports received from CAA, many house churches in Beijing were pressured to stop gathering or to leave Beijing. House church leaders in Beijing identified the move as a new tactic to persecute the house churches before the Beijing Olympics.

Prohibition of Religious Groups at the Olympics: According to disclosures which CAA received from reliable internal Chinese Government sources, the Ministry of Public Security of the Chinese Government issued a general nationwide order in April 2007 that all those from China and overseas who will participate in the Olympic Games, including athletes, media and sponsors, are to be strictly checked. The Ministry of Public Security also secretly issued a document entitled "Notice on Strict Background Check on Applicants for the Olympic Games and the Test Events." In the 11-category blacklist, the third category is "Religious extremists and religious infiltrators." The categories are further divided into 43 groups and Category Three includes the following:

1. Members of illegal religious organizations both in China and abroad.
 2. Members who have been caught by the Chinese authorities for engaging in religious activities.
 3. People who have given illegal sermons.
 4. People who illegally distribute religious publications and video/audio materials.
 5. People who have illegally established both in China and abroad religious organizations, institutions, schools, sermon sites and other religious entities.
- The restrictions also apply to those wishing to attend the Beijing 2008 Olympic Games.

Forced Labor for Olympic Products: While in prison, Beijing house church leader Pastor Cai Zhuohua was forced to work 10 to 12 hours a day making soccer balls for the Olympics. Pastor Zhuohua was released in September 2007 after serving three years of imprisonment for "illegal business practices" for production of Christian literature.

Rise in Persecution of Foreign Christians: China has conducted the largest expulsion of foreign Christians since the 1950s when all foreign missionaries were expelled. In a campaign termed "Operation Typhoon No. 5," over 100 foreign Chris-

tians had been arrested, interrogated and expelled from China by the end of 2007. Most were from the West, but Koreans and those of other nationalities were also targeted. Seventy foreigners with secular business operations were expelled from Xinjiang alone. CAA reports an 833 percent increase in such expulsions compared with the previous year. Amongst the firms targeted was the British company Jirehouse which ran an operation in Xinjiang. The company's Project Manager, Alimujiang Yimiti, a Uyghur Christian, was accused of engaging in illegal religious activities and tried on May 27, 2008, for endangering national security.

Persecution of Christian Publishers: A further trend relates to the treatment of those involved with Christian publications. There have been a series of cases where those involved in producing Christian literature have been accused of illegal business practices. Beijing church leaders Pastor Cai Zhuohua and Mr. Shi Weiha have both been targeted in this manner.

Prevention of Aid: Although China's house church Christians have a strong desire to provide social support and humanitarian aid in China, authorities prevent them from carrying out such work. Government officials have refused aid from house church Christians to help the earthquake survivors in Sichuan Province and even arrested house church members who have volunteered to help those affected by the disaster. Among the cases was the arrest of three Christians in Sichuan Province on May 31, while they were carrying out relief work. On June 1, police raided a house church meeting in Henan Province and interrogated participants about which church members would be taking donations to the earthquake affected area. Six members were held in detention under the charge of sending money to a disaster area in the name of a house church. Police and religious affairs officials stated they would not release them until they each paid a 1,000 yuan fine. The restriction on religious believers seeking to help survivors has been highlighted in *The Wall Street Journal*.²

Exploitation in the Exercise of Law: CAA continues to receive reports from numerous provinces of individuals targeted for their peaceful practice of their Christian faith.³ Despite the religious nature of their actions, some Christians are subjected to criminal detention and face such charges as "endangering national security" and "inciting separatism." They have faced further difficulty to rightful legal representation when their lawyers are withheld or harassed. Experiences of inhumane and violent treatment while in detention is consistently reported, including report of prisoners with serious medical conditions not receiving requested medical treatment.

RECOMMENDATIONS

Following his visit to China in 1994, the United Nations Special Rapporteur on Religious Intolerance⁴ made a number of recommendations which would assist in bringing China's religious law and practice into line with international standards. These recommendations are from an authoritative impartial source and China should be urged to implement them. They include the recommendations that China should:

- Provide an explicit guarantee of the right to manifest religion and, accordingly, amend the pertinent legal texts, including Article 36 of the Constitution, to provide constitutional guarantees of religious liberty that accord with the definition of religious freedom provided in the 1981 Declaration.
- Adopt a specific provision clearly stating that persons under the age of 18 have the right to freedom of belief, in accordance with China's obligations under the 1989 United Nations Convention on the Rights of the Child, particularly those arising under Article 14.
- Adopt a text explicitly recognizing the right to freedom of belief for everyone, including members of the communist party and other socio-political organizations.
- Abandon the practice of distinguishing between "normal" and "abnormal" religious activities and respect the right of all individuals to freely follow their chosen belief, without interference, subject only to the limitations laid out in international standards, most notably in Article 1(3) of the 1981 Declaration, namely only those that are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
- Release all those detained for religious reasons.

² See <http://online.wsj.com/article/SB121208455251929967.html> or <http://chinaaid.org/2008/05/30/chinaaid-relief-effort-reported-by-wall-street-journal-christian-groups-step-delicately-in-sichuan/>

³ Specific cases are presented in report at <http://chinaaid.org/pdf/Pre-Olympic—China—Persecution—Report—in—English—June2008.pdf>.

⁴ The title of the Special Rapporteur has since been changed to Special Rapporteur on Freedom of Religion or Belief.

- Provide human rights training, particularly on religious freedom, to state officials and judges.
- Post the principal texts on religious freedom in the relevant administrative services concerned, compile and distribute a compendium of texts on religious freedom together with implementation instructions, distribute human rights materials to religious organizations and inform citizens and organizations of appeal procedures available in the event of refusal to register religious organizations.
- Provide education on religious freedom, including at the university level.

In addition it is recommended that China:

- Recognize the right of freedom to choose any religion, including those outside the official organizations and the five recognized religions.
- Rescind the registration system in its present form so that it is no longer a mechanism for controlling religious activity.
- Cease the policy of imposing penalties, including administrative and criminal detention, fines, confiscation of property and destruction of premises, for religious behavior.
- Establish a dialogue with representatives of the house churches, as requested in the appeal issued by house church leaders on August 22, 1998.
- Maintain follow-up contact with the Special Rapporteur on Freedom of Religion or Belief.⁵
- Ratify the International Covenant on Civil and Political Rights and amend legislation and practice to conform to the rights laid out therein.
- Implement effective protection for religious believers from arbitrary detention and abuse by officials and address the impunity of officials who abuse individuals and groups due to their religious beliefs.
- Allow the free movement of religious materials and personnel into and within the country.

PREPARED STATEMENT OF HON. SANDER LEVIN, A U.S. REPRESENTATIVE FROM MICHIGAN, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

JUNE 18, 2008

Nearly six decades ago, in 1949, Mao Zedong spoke near Tiananmen and announced that “the Chinese people have stood up.” The world took note.

Nearly two decades ago, on June 4, 1989, the Chinese people stood up again at Tiananmen, but China’s leaders ordered them to stand down. Many defied that order, choosing instead to remain faithful to their aspirations. We all remember how China responded. The world took note.

Less than one decade ago, On July 13, 2001, the Chinese people stood at Tiananmen again, this time to celebrate the success of Beijing’s bid to host the 2008 Olympic Summer Games. China’s leaders made a number of very concrete commitments in connection with Beijing’s bid, including commitments to hasten progress in human rights and the rule of law, and they repeatedly promised the world that China would fulfill these commitments in the period leading up to the Olympic Summer Games. The world took note.

The world takes note that China’s leaders repeatedly tell the world that the Chinese people stand and speak, but at the same time repeatedly shows the world that those of its citizens who most vigorously display fidelity to the aspirations of the Chinese people to remain standing and to speak freely are silenced.

This Commission was created by Congress and the President in 2000 to monitor and report on China’s compliance with international human rights standards and the development of the rule of law. A hearing held by this Commission in February of this year documented and examined the commitments that China has made in connection with its Olympics bid and its preparations for the 2008 Summer Games.

I draw your attention to this booklet which contains a full transcript of the hearing, as well as full witness statements and other useful resources. Please be sure to take a copy from the table in the back, or download the pdf version from the Commission’s web site, www.cecc.gov. There you will read in detail how China committed to progress on press freedom, on the environment, on basic human rights, on openness in general, and in many other areas. You will see why it is reasonable to say that the record remains highly disappointing.

I should say that the new Regulations on Open Government Information may be one possible exception—I say “possible” because implementation of this new measure, though potentially promising, is still in the very early stages.

⁵ See <http://www2.ohchr.org/english/issues/religion/index.htm>.

Nonetheless it remains unclear at this time what factors will set the course of China's future legal development. And that is why we are doubly privileged to listen today to four people whose commitment to the development of the rule of law in China has been unwavering.

And let me make clear that, by the "rule of law," I mean true rule of law, not documents stamped with the word "law" that officials then allow to become so divorced from effective implementation that the distinction between the promulgation of law and the making of propaganda becomes meaningless. For that appears to be exactly what has occurred in many areas of the law in China. It is a growing concern in no small part because it places the credibility of three decades legal and regulatory reform at ever-increasing risk.

In its last Annual Report, this Commission noted four factors that appeared to be highly influential in determining the course of China's future legal development.

- First, China's leaders' increasing intolerance of citizen activism.
- Second, increasing, and increasingly obvious, manipulation of law for politically expedient purposes.
- Third, a concerted effort to ensure that sensitive disputes do not enter legal channels, thereby insulating the Central government from the backlash of national policy problems.
- Fourth, the growing impact outside of China of its domestic problems of implementation.

Let me also note that the Commission's 2007 Annual Report explicitly noted that "the impact of emergencies" and China's response to emergencies

will both shape and be shaped by China's rule of law reforms. Because their impact on the course of rule of law in China is expected to be large, these developments are covered here in added detail.

That was nearly six months before the Tibetan protests, and eight months before the recent earthquake. Of course the emergencies to which the Report referred were not these (it discussed food safety, product quality and climate change), but the notion that emergencies per se would become a major element structuring the course of China's future legal development was a significant observation.

Today I would ask our panelists to tell us from their own first hand experience the factors that we should keep in mind as we evaluate the status of rule of law issues in China and their impact on creating an atmosphere of progress for China's citizens.

PREPARED STATEMENT OF HON. BYRON DORGAN, A U.S. SENATOR FROM NORTH DAKOTA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

JUNE 18, 2008

The purpose of today's hearing is to examine China's legal development. For three decades now, China has engaged in legal reform. But it seems to be at a stand still, and it is unclear at this point whether that means it has stalled or is at a turning point.

Why does it appear to be at a stand still?

Well, first, the massive earthquake that tragically killed and injured tens of thousands of people, too many of them children. Second, the violent crackdown that began in March continues in Tibetan areas. Beijing has closed off most Tibetan areas, and detained or expelled journalists. Finally, the Summer Olympic Games are fast approaching. Hosting the Olympic Games has highlighted some of Beijing's achievements. We don't and shouldn't deny them that. But even more it has highlighted Beijing's terrible record on human rights and the environment. As the Olympic torch circled the globe, Beijing's Olympic dream became a public-relations nightmare.

These three events are having an enormous impact on many areas in China, including legal reform and human rights. And that is why we are here today.

At the Commission's February hearing on the Olympics, I submitted for the record a list of political prisoners. Here is an update on just one: Hu Jia, a courageous activist, was jailed last December by Chinese authorities for comments he made at a European Parliament hearing. His comments were critical of China's hosting the Olympics. At the time of the CECC hearing, his wife and 4-month-old daughter had been under house arrest for several months. In April, he was sentenced to three and a half years in prison for "inciting subversion of state power." Hu has severe health problems. His request to be released on bail for medical treat-

ment was denied in June. His wife and baby remain under constant surveillance, and face harassment.

Every country that has hosted the Olympics has had its critics—both at home and abroad. China has dissenting voices too on the Olympics—like Hu Jia. But instead of being tolerant, it has hit back hard with a combo punch of intimidation and imprisonment.

The Commission is dedicated to understanding these events on a deep level. For that reason, we have called four prominent Tiananmen Square activists and now internationally renowned figures in human rights and rule of law in China. We hope they will address two straightforward questions:

What factors are most likely to determine the course of China's legal development in the coming year and beyond?

What factors do Western analysts more frequently tend to overlook or misinterpret?

I would ask each of our witnesses to highlight for us the factors that, in each of your varied experiences, and unique perspectives this Commission should focus on in order to most effectively understand the course that China's legal development is taking and will take as events unfold.

It would be helpful if you would focus specifically on steps China has taken to: combat corruption and to maintain popular support for further reform, prospects for the enforcement of worker rights, collective bargaining, and labor unions.

I would also ask that you comment on the regulation of religious life and of minorities, and trends in pre-Olympic crackdown.

Finally, I would also ask each of our witnesses to make a point also of identifying for us the one or two factors that, in your experience, Western analysts most frequently overlook, misunderstand, or plainly misinterpret. Your complete candor will be most helpful and appreciated.

PREPARED STATEMENT OF HON. JOSEPH R. PITTS, A U.S. REPRESENTATIVE FROM PENNSYLVANIA, MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

JUNE 18, 2008

Mr. Chairman, thank you for holding this important hearing on What Will Drive China's Future Legal Development? Reports From the Field. I remain disturbed about the negative trends on human rights issues in China prior to the Olympic Games in August. Many thought the Chinese government would understand that with a brighter spotlight on its treatment of its citizens, the officials would take this opportunity to allow for more freedom for journalists, lawyers and human rights advocates. There were positive steps in relation to allowing reporting on the tragic earthquake in China, and this led to much international sympathy and humanitarian and disaster assistance. However, the general trends are disturbing as there is increased harassment of religious leaders and practitioners and others. Case in point is the May 21, 2008 recording of Chinese consulate official Mr. Peng Keyu describing his and other officials' role in organizing, in the United States, protests against and harassment of Falun Gong members. While this particular instance focused on Falun Gong, I have received reports of other Chinese religious believers or political activists inside the United States being harassed and threatened by Chinese government officials. It is indeed a problem when Chinese officials harass their own citizens at home and in a nation like ours where rule of law is established—it's even more disturbing when the Chinese government hacks the computers of Members of Congress who focus on raising awareness of human rights violations within China. That does not bode well for the positive treatment of the average Chinese citizen who wishes to peacefully express his or her social, political or religious views.

In our previous hearing, I mentioned being encouraged and discouraged during countless cycles of two steps forward and then three steps backward in terms of the Chinese government's respect for the Chinese people. Sadly, since our February hearing, nothing has really changed. I continue to receive numerous reports about Chinese officials' actions against North Korean refugees, Uyghur Muslims in Xinjiang Province, child laborers, Tibetans, Catholics loyal to the Vatican, and Protestant house church leaders and congregants. In fact, on June 1, 2008, government officials detained nine house church congregants in Henan for providing funds to help victims of the earthquake, and in late May, security officials confiscated a bank card, a mini-van, Bibles and Christian literature from a house church seminary. It does not appear the Chinese security officials are interested in maintaining any facade of treating religious believers with respect. There are additional reports,

including from China. Aid Association, that the “Ministry of Public Security has received funding from the Chinese Central Government to increase its campaign of eradicating house churches throughout China.” Even further, this morning I received a report that a senior house church leader, Mr. Zhang Mingxuan, and his interpreter were detained today as they traveled to meet with an official from the European Union; Pastor Zhang has been beaten, arrested, and imprisoned 12 times by Chinese security officials.

It takes great courage and leadership to challenge the Chinese government’s actions and attitudes, even more so when the officials break their own laws. Yesterday, the National Endowment for Democracy held an event to honor “Chinese workers, lawyers, and writers working to advance democratic values and fundamental rights within China.” Recipients of the NED award included Chen Guangcheng, Teng Biao, Li Heping, Li Baiguang, Zhang Jianhong, Yao Fuxing, and Hu Shigen. These individuals, our witnesses today, and others who cannot be named, are true heroes as they seek to make a better today and tomorrow for the people of China.

I look forward to hearing from our very distinguished witnesses and receiving their insights and recommendations on steps the U.S. Government should take to further support the fundamental rights of the Chinese people.

